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UNIVERSITY OF ILLINOIS STUDIES  
IN THE  
SOCIAL SCIENCES

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PUBLISHED QUARTERLY  
BY  
THE UNIVERSITY OF ILLINOIS

VOLUME VII

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URBANA, ILLINOIS  
1918

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BOARD OF EDITORS

ERNEST L. BOGART

JOHN A. FAIRLIE

LAURENCE M. LARSON



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MARCH-JUNE, 1918

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PUBLISHED BY THE UNIVERSITY OF ILLINOIS  
UNDER THE AUSPICES OF THE GRADUATE SCHOOL  
URBANA, ILLINOIS



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Legislative Regulation of Railway  
Finance in England

CHING CHUN WANG





## PREFACE

The purpose of this study is to find out what rules the English Parliament has adopted from time to time for the regulation of railway finance, and to ascertain, as far as possible, why these rules were adopted, how they have been applied, and to what results they have led.

In this study, the writer used the series of the so-called finance acts as the back bone. After having become familiar with the provisions in these finance acts and having classified these numerous provisions into a number of divisions, he then traced, as far as he could, the parliamentary debates upon these measures. He also endeavored to compare the original bills with the amended ones as well as to examine other contemporary bills which had anything to do with these finance bills, with the hope of understanding the position of the legislators. The writer also took care to examine the popular, the railway, as well as the expert financial writers' opinions prevailing during those years when these regulative measures were adopted or agitated. For this purpose the London Times, the Railway Times, and the Economist were most frequently consulted.

In the following pages, the writer has endeavored first of all to trace the development of the general legislation on railway finance so that a fairly comprehensive idea of the nature of legislative regulation may be gained. Then follows a review of the efforts of parliament to secure proper restriction upon the issue of capital securities, attention being given, in the first place, to share capital. Although loan capital forms only about one-third of the total railway capital, the method of control has loomed large in the English system of regulation. Accordingly the questions of limitation upon the borrowing powers of the railway companies, the registration of railway securities, as well as the regulation of loan capital itself have been treated in some detail. The attitude of Parliament toward railway stock watering is also shown. To the important features of control of accounts, government audit, and inspection two chapters are devoted.

Most of the information contained in this study is obtained from such original sources as the British Statutes at Large, reports of parliamentary and departmental committees, parliamentary debates, direct communications from offices of the Board of Trade, and similar material.



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## CHAPTER I

### GENERAL LEGISLATION ON RAILWAY FINANCE

As England was the pioneer of railway building so was she the first to make experiments in the regulation of railway finance. English statesmen had recognized the importance of regulating railway finance before any other country had seriously considered the question. As early as the railway itself was introduced, we find traces of efforts which were made by the English Parliament in this direction.

One thing which especially stands out to the credit of the English legislature is the fact that it had learned a great deal about the regulation of railways during the first fifty years of railway enterprise and had then arrived at certain important conclusions which, in some other countries, have not been properly understood until very recently. From the early thirties, English legislators have recognized that the interest of the railways is bound up with that of the public and that the interests of the two cannot be separated.<sup>1</sup> Herein lies a partial explanation of the fact that Parliament practically has never enacted laws which might properly be called hostile to the railway companies.

The English railways, like those of the United States, are private enterprises, and under private operation. The part played by both Governments is that of a supervisory nature. The Governments of both countries have thought of purchasing and owning their railways,<sup>2</sup> and both have refrained from adopting that course.

The systems of regulation of the two countries are also similar.

<sup>1</sup> See the remarks of Mr. Homes in the House of Commons, 1836. Hansard's *Parliamentary Debates*, series 3 (hereafter called Hansard), v. 46, p. 1336.

<sup>2</sup> Detailed provisions were made in the Railway Regulation Act, 1844 (7 & 8 V. c. 85), for Government purchase of railways under certain conditions.

The early railway charters in the United States "reveal almost at a glance," says Prof. B. H. Meyer,<sup>3</sup> "their common origin in the English law." The principles underlying our federal laws, as well, bear much resemblance to those accepted in England. But in spite of such great similarities there is a striking difference between the two systems of regulation. This difference, however, lies not so much in the regulations themselves as in the manner and emphasis of regulation. First of all, the United States has never attempted any strict regulation of railway finance, while England has always regarded the regulation of this branch of railway enterprise as essential. Then again in England there is only one kind of regulation — namely, that adopted and enforced by the national legislature, while in America the numerous systems of state regulation have been of greater importance or at least have given the railways more trouble than the federal regulation, though recent developments indicate a large increase of the importance of the latter. The railways in England, therefore, do not have any such complicated controversies as have resulted in the United States from the conflicting regulations of the state and federal governments.

England also has enjoyed from the beginning many advantages, which other countries envy. There has always been a class of enterprising capitalists ready to embark in railway undertakings and a class of men qualified by ability and business habits for the duties of railway directors, officers, and engineers. Therefore, instead of having trouble in persuading capital to embark in railways when the enterprise was first introduced, as was generally the case in other countries, England found it necessary to caution capitalists from investing too readily. Her problem in the beginning was not to induce investors to come forward, but to caution them to be steady and to protect them from being swindled by "bubble" schemes. Her difficulty has not been to extend her railway system but to prevent superfluous construction.

The English railway system had its origin in the enterprise of individuals interested in the different localities. The efforts were not fostered by the legislature as objects of national concern, as was often the case on the continent, but were regarded

<sup>3</sup> *Annals of American Academy of Pol. and Social Science*, vol. 10, p. 390.



as projects undertaken for the profit of their promoters, which Parliament might sanction for public advantage. In dealing with these undertakings the legislature followed the policy which had been pursued with success and benefit to the country since the middle of the eighteenth century, of allowing private enterprise to develop and manage inland navigation. Under this system each project was considered entirely on its own merits, and sanctioned by a private act of Parliament which contained the entire statute law applicable to the undertaking.<sup>4</sup>

In the regulation of railway finance, as in other branches of government activity, each country has adopted a policy deemed at the time to be most suitable to its own special requirements. "The continental system is a paternal system in which the government overlooks and controls all the acts of the companies. The American system is one of complete freedom. Neither system is exactly suited to our (English) requirements, or our characteristics. But the English system is like the American, in so far as it is based on principles of freedom." This remark of the Royal Commission on Railways of 1865-67<sup>5</sup> regarding the rate system of Europe and America applies equally well in the case of railway finance. Thus the general policy of the Board of Trade, the Government office which has much to do with railways, "has rather been to favor the utmost liberty to public companies to arrange their capital in any way they pleased."<sup>6</sup>

But at the same time the English Parliament recognized that for the public advantage it is desirable that a railway should yield a reasonable return to its investors.<sup>7</sup> When a railway pays little or no dividend on its capital, it has been feared that working expenses may be cut down injuriously, with the resulting disadvantages of insufficient or inefficient service. Then again, the embarrassment of one company in failing to furnish reasonable returns on its capital might discourage other investors from coming forward to put their money in the beneficial railway enterprise, which fact would result not only in the checking of the railway industry itself but in the hampering of the growth of all

<sup>4</sup> *Report of Royal Commission on Railways*, 1867, p. vii.

<sup>5</sup> *Report of Royal Com. on Railways*, 1867, p. lii.

<sup>6</sup> *Evidence before Select Committee on Railway Stock Conversion*, 1890, p. 37.

<sup>7</sup> *Report of Select Committee on Railway Borrowing Powers*, 1864, p. iii.

other industries and commerce in general. Furthermore, England has for years recognized the value of encouraging the circulation of capital, as shown by her effort to provide for the investment of all trust funds. These and other reasons led Parliament to attempt, from the beginning of railway enterprise, to regulate railway finance not for the direct interest of the government but for the security of the investors.<sup>8</sup> From a close study of the efforts of Parliament in regulating railway finance, one cannot fail to be impressed by the feeling that the English legislature has constantly borne this in mind.

There were in England, during the early years of its railway history, as there are now in the United States, many people who did not believe in government regulation of railway finance for the protection of investors. A leading lawyer in London said,<sup>9</sup> "I do not see why the Legislature should interfere to protect them (railway investors) more than other people. If they choose to take shares upon those conditions, it is their own affair." A prominent financial paper<sup>10</sup> also said that "as a principle, we believe there is nothing more objectionable than an attempt on the part of a government to find prudence for the people. It removes a great weight of personal and individual responsibility and caution, and creates a reliance on public officers as the only, however imperfect, substitute."

These opinions changed radically at times,<sup>11</sup> but gradually people began to appreciate the fact that certain regulations are indispensable for the protection of the investors in such a complicated business as railways, where it is well nigh impossible for the layman investor to ascertain the value or safety of securities issued, and where the confidence of the multitude of in-

<sup>8</sup> Report of Committee, April 24, 1837, p. xxvii. *Parliamentary Papers*, 1837, vol. 14, part 1.

<sup>9</sup> *Evidence before Select Committee on Railway Companies' Borrowing Powers*, 1864, p. 20.

<sup>10</sup> *Economist*, February 8, 1845.

<sup>11</sup> The *Economist* said that at one period, "men loudly complain of any impediment, however right it may be, which the restriction of acts of Parliament throw in their (railways') way," while at another time, "they evince the greatest impatience that Parliament will not at once disregard every general principle and interfere by compulsory means to put a stop to a course undertaken with their own free-will." *Economist*, April 11, 1846.

vestors has an immediate and serious effect upon the commerce of the whole nation.

This general policy has changed from time to time, although not as violently as it has in some other countries or as it has in the regulation of other branches of railway enterprise in England itself.<sup>12</sup> The change of policy has been due, on the one hand, to the change of public opinion and the circumstances of the time; and, on the other hand, to the changes within Parliament itself. It may be said safely that English railway policy has largely depended upon a varying and conglomerate body of legislators, "who may be assumed to have had no special familiarity with the subject on which they were legislating."<sup>13</sup> As Parliament has power to adopt any general or special measures to regulate any branch of railway enterprise as it sees fit, one may readily expect that occasional deviations from the adopted principles would be made.

The nature of the English system of regulation is also characteristic. Railway finance in England is regulated by two sets of rules:

A. General laws applicable to all companies.

B. Special laws applicable to particular companies.

The general laws are based on broad principles and are embodied in the general acts of Parliament. These general acts are applicable as a whole or only by incorporation in the special acts of the companies as the case may be. The special acts, which are enacted to govern individual companies, resemble the charters in the United States, but are obtainable only from Parliament by fulfilling certain requirements.

In the first place, the special act creates an incorporated company with all the corporate privileges attaching to such incorporation. In the next place, it gives power for, and prescribes rules governing the raising of capital. Then it grants the company the necessary powers to take land, lays down the rules governing meetings of the company, the construction of the road, and finally it defines the right of the public in using the railway. It also outlines the powers of the company, for example in charging tolls. The fact that out of a total number of forty-four sec-

<sup>12</sup> J. S. Jeans, *Railway Problems*, 1887, p. 64.

<sup>13</sup> W. W. Aeworth, *Elements of Railway Economics*, 1905, p. 132.

tions of a recent railway bill <sup>14</sup> fourteen are devoted to financial matters, fairly indicates the importance attached by Parliament to the regulation of railway finance.

In these special acts are included not only the special regulations made to meet the individual conditions of the company, but also various provisions contained in the general companies acts. A clause is uniformly inserted to subject the company to "the provisions of any general act relating to railways now in force, or which may hereafter pass." <sup>15</sup>

It follows, as a consequence of Parliament having granted to each company in its special act its corporate privileges, that when the company desires to alter the terms of that incorporating act, to enlarge its original capital, or in any way to vary the conditions under which the capital is to be raised, a new application to Parliament becomes necessary. <sup>16</sup>

The most important of the general acts governing railway finance are the Companies Clauses Acts, 1845 and 1863, Railway Companies Securities Act, 1866, Railway Companies Act, 1867, Regulation of Railways Act, 1868, and Railway Regulation Act, 1871. All except the first two acts named above are applicable to all railways without incorporation in the special acts.

In the enactment of special acts, Parliament is guided by a set of standing orders as well as its model bills and clauses.

While the development of English legislation on railway finance has been a continuous one, still it may be divided into three periods. The years from 1801 to 1844 form the first period, 1845 to 1871, the second period, and 1872 to date, the third period.

Although railway finance has received much consideration from the beginning, during the first period it was regulated in a more or less haphazard manner. The legislative measures then taken were modelled after the special canal and turnpike enactments. There was no general law governing railway finance.

The second period, covering the twenty-seven years from 1845 to 1871, is by far the most important in the history of English legislation on railway finance. Concurrent with the railway

<sup>14</sup> The Coventry Railway Bill, 1910, now withdrawn.

<sup>15</sup> Standing Order No. 1686 of the House of Commons, 1906.

<sup>16</sup> *Report of the Royal Commission on Railways*, 1867, p. xlii.



mania and disastrous railway panics which formed a special feature of this period, the English system of financial legislation underwent rapid evolution and was subjected to repeated tests. The financial problems of railways formed a common topic of conversation and were kept constantly before the eyes of Parliament. Numerous inquiries were put on foot, and attempts made to bring the system of legislation to a higher state of efficiency. As a result of this unparalleled activity of both the public and Parliament, all the important general acts governing railway finance were passed during this period. The rules which were then adopted have remained unchanged, and few additions have been made. The regulations which England uses to-day in governing railway finance, with the single exception of the Railway Accounts Act of 1911, are exactly those adopted prior to 1871. Be these acts efficient or not, the fact that they have seen service for over forty years without being modified clearly indicates either one or the other of two theories. First, it may mean that the English system had been developed to such completeness prior to 1871 that no modification has become necessary or, secondly, it may mean that after the exertion during the sixties, the English have been undergoing a state of reaction and have since become too inert to modify these rules. While both hypotheses are to a certain extent permissible, history shows the first to be the more reasonable.

As has been indicated before, no legislation on railway finance has taken place since 1871. From that year on has been a period of application of principles already adopted during the first two periods. Stock-watering received consideration in 1890, but no general legislation or new principle was evolved. Moreover, the present outlook indicates that with the exception of some legislation on railway accounting, few material changes are likely to take place in the near future.

While the general purpose of all the legislation is to afford security to the investors, yet the place of emphasis of each period is distinct and different from those of the other periods. Thus the early legislation was largely for the purpose of insuring the *bona fide* character of railway enterprise before granting Parliamentary recognition and of demanding, though without a true understanding of its significance at the time, publicity of rail-

way affairs. Different from almost all other nations, as already stated, the English did not have trouble in inducing investors to embark in railway enterprises. On the contrary, she had to exercise considerable restraining influence. Thus the most prominent topic of legislation during the early period was the matter of preventing "bubble" schemes by securing an efficient system of subscription contracts and of requiring substantial deposits of money on each share subscribed, before permitting railway enterprises to receive Parliamentary sanction.

The question which received the greatest emphasis during the second period was how to restore the confidence of the investing public. The early regulations proved to be too indefinite, and railway finance was found to demand more public interference. Therefore, efforts were mostly directed toward finding methods of regulating railway finance rather than to the discovery of new principles.

Coming to the third period, we find the place of emphasis has returned to that of the first period, especially in the matter of publicity. The most important inquiries made during this period have invariably resulted in the demand for greater publicity. In spite of this similarity in emphasis, however, there is nevertheless a distinct difference, in that what has been done during the third period is more definite and has been done with a much clearer conception of what publicity means in the regulation of railway finance than during the first period. After forty years' experiment, England has remained where she was four decades ago, as far as the standing rules are concerned; but she seems to have determined upon the relative emphasis to be applied to her system of regulation in the future.

In tracing the historical development we find that prior to 1844 English legislation on railway finance was limited to the provisions embodied in the numerous private acts. Each company had its own special acts which contained the entire statute law applicable to the undertaking of that company.<sup>17</sup>

Early legislation was greatly influenced by the current conception of the railway as a turnpike. Time and again we find acts passed which dealt jointly with stage roads and railways as if the two were similar. The Duke of Wellington is said to have

<sup>17</sup> *Report of Royal Commission on Railways, 1867, p. vii.*

stated that in dealing with railways it was above all else necessary to bear in mind the analogy of the King's highways.<sup>18</sup> This remark, misleading as it appears now, was well representative of the current belief.

Then again, the early acts followed very closely in their general scope, the provisions which had been applied to canal companies. The earliest canal acts, however, gave no power of borrowing,<sup>19</sup> while the railways had been permitted to borrow from the beginning, to a certain extent. Thus the act of May 21, 1801,<sup>20</sup> the earliest railway act, providing for the construction and maintenance of a railway from Wandsworth to Pitlake, stated, "Proprietors may raise £30,000 by shares of one hundred pounds each, to be numbered and deemed as personal estate. Names of proprietors to be entered in a book, and tickets of their shares distributed to them. Proprietors may raise £15,000 more if necessary, by subscription or mortgage."

Before 1847 considerable laxity, however, prevailed in the manner of framing the provisions governing the raising of capital. But the great burst of railway extension in 1836 awakened some legislative activity, and the committees of Parliament on railway bills began to feel the necessity of enacting clauses conducive to the public welfare. A select committee was appointed to inquire into the matter, but no legislation took place.<sup>21</sup> However, the restrictions imposed by Parliament, in 1837 and subsequently on the obtaining of railway acts, temporarily arrested speculation.

In 1839 a select committee was again appointed to inquire into the state of railway communication, and as a result of its recommendations a general "saving" clause was inserted in the Croydon railway bill.<sup>22</sup> In 1840 another select committee was appointed by the House of Commons to inquire into railway af-

<sup>18</sup> C. F. Adams, *Railroads*, p. 82.

<sup>19</sup> The first act in which these powers appeared was passed in 1770. By degrees the borrowing powers of public companies were restricted to one-third of their share capital. See *Report of Royal Commission on Railways*, 1867, p. vii.

<sup>20</sup> 41 George 3, c. 33.

<sup>21</sup> *Quarterly Review*, v. LXXIV, p. 239.

<sup>22</sup> The "saving" clause inserted in the Croydon bill reads:

"And be it further enacted that nothing herein contained shall be deemed or construed to exempt the railway by this or the said recited acts

fairs.<sup>24</sup> Although no general legislation took place, committees seem to have done considerable good in throwing light upon the nature of railway transportation.<sup>24</sup>

Under this irregular system of legislation numerous charters were granted and liberal encouragements were sometimes given to the construction of railways. Then came that disastrous railway mania of 1844, and England "awoke one day" as C. F. Adams dramatically describes it, "from dreams of boundless wealth to the reality of general ruin."<sup>25</sup>

To see what could be done to improve the situation, a Parliamentary committee was appointed early in 1844. It recommended, and Parliament resolved that the following "saving" clause, which had been inserted in railway bills in 1839, should be uniformly inserted in all railway bills approved by Parliament. The clause was as follows: "And be it further enacted that nothing herein contained shall be deemed or construed to exempt the railway by this or the said recited Acts authorized to be made from the provisions of any general Act relating to such Bills which may pass during the present session of Parliament, or of any general Act relating to railways which may pass during the present or any future session of Parliament."

The committee gave to the question of railway legislation a more comprehensive consideration than it had hitherto received. As a result of the inquiries of this committee, provisions were authorized to be made, from the provisions of any general act relating to railways which may pass during the present or any future session of Parliament." Hansard, v. 47, pp. 682-684. Compare with a similar clause resolved by Parliament to be inserted in all railway bills, since 1844, which appears in the next page.

<sup>24</sup> *Report of Royal Commission on Railways*, 1867, p. x.

<sup>25</sup> This committee was the first body of officials to point out to Parliament that the right reserved to the public by the early railway acts of running their engines and carriages on the railways was practically a dead letter, for the reason that (1) no provision had been made for ensuring to independent trains, etc., access to stations and watering places along the line, (2) the rates of charges limited by the acts were almost always too high to permit independent parties to work their trains, (3) the necessity of placing the running of all trains under the complete control of one management interposed much difficulty in the way of independent traders. *Ibid.*, p. x.

<sup>25</sup> C. F. Adams, *Railroads*, p. 85.



made, in the Railway Regulations Act, 1844,<sup>26</sup> for the suppression of loan notes which had been issued without legal authority during the period of rapid railway extension.

By this time the provisions of the special acts governing each company had become very complicated and numerous. The number of clauses contained in some of these acts had gradually increased from 95, as in the act for the Wandsworth and Croyden Railway, 1801, to 381, as in the act of the Lancaster and Carlisle Railway passed in 1844. As Lord Somerset<sup>27</sup> remarked in the House of Commons, there were an "immense" number of statutes relating to these railway matters which occasioned a great amount of uncertainty. In order to obtain greater uniformity in the general provisions inserted in railway acts and to render them more concise, the select committee of 1844<sup>28</sup> recommended that the numerous clauses in railway acts which "were common to all and undisputed" should be consolidated into a general act.

In the following year, Parliament following the recommendations of the select committee of 1844, for the first time passed three clauses consolidation acts, containing the clauses which were applicable to companies in general and which had been usually inserted in the private acts, as well as some other general provisions which Parliament deemed it desirable to enforce. This was done with the hope of securing uniformity. The acts, however, did not prevent committees of either house of Parliament from dispensing with some of these provisions in particular cases.

One of the three general acts had to do with the regulation of railway finance. This act<sup>29</sup> contained provisions for regulating the manner in which the companies' capital should be raised, the further borrowing of money, the rights and responsibilities of shareholders, the powers and duties of directors, the declaration of dividends, the keeping and auditing of accounts, and, in a general way, the manner in which the companies' financial affairs should be conducted.<sup>30</sup>

The expectations of the legislature in enacting the general act

<sup>26</sup> 7 & 8 V. c. 85 ss. 19-21.

<sup>27</sup> Hansard, v. 77, p. 170.

<sup>28</sup> *Report of Royal Commission on Railways*, 1867, p. xi.

<sup>29</sup> The Companies Clauses Act, 1845, 8 V. c. 16.

<sup>30</sup> See also *Report of Royal Commission on Railways*, 1867, p. xii.

were fully and quickly realized. The consolidation of the numerous clauses brought about a great degree of certainty and uniformity, and made the law more accessible and intelligible to the public.

It must be remembered that, at the time when the Companies Clauses Act, 1845, was passed, the great railway mania was at its height. The profitable returns afforded by the earlier railways attracted a large amount of capital. Consequently competing lines were proposed to most of the important centers of population. Parliament, as the report of the select committee of 1844 showed, sanctioned many such lines for the purpose of encouraging competition, with the belief that the remedy for the evil consequences of any monopoly which a railway was thought to possess, was to be found in the construction of a competing line.<sup>31</sup> "There has certainly never before been any one object of speculation," said the *Economist* in 1845, "into which all classes and ranks of men have entered so warmly as at this time into railways. There seemed to be no business too absorbing, no profession too grave, and no privacy too secluded, to be able to keep off this universal mania."<sup>32</sup>

Reaction soon followed action with equal force. The feverish railway extension led to a demand for capital for investment larger than the resources of the country could supply. As the railway fever was intense, so was the railway collapse complete. At the end of 1847 an act<sup>33</sup> had to be passed to extend the time for the construction of many railways, and in 1850 another act<sup>34</sup> to enable railway companies to abandon powers of proceeding with portions of their undertakings, and to release them from the conditions which had been attached to such powers. The complete collapse may be shown by the fact that of the 8,592 miles of railway sanctioned in the three sessions of 1845, 1846, and 1847, no less than 1,560 miles were abandoned under the power of the Railway Abandonment Act.<sup>35</sup>

The financial difficulties caused by the pressure for capital led the House of Lords to appoint a committee in 1849 to consider

<sup>31</sup> *Report of Royal Commission on Railways*, 1867, p. xvii.

<sup>32</sup> *Economist*, February 1, 1845.

<sup>33</sup> See *Report of Royal Commission on Railways*, 1867, p. xvi.

<sup>34</sup> Abandonment of Railways Act, 1850, 13 & 14 V. c. 83.

<sup>35</sup> *Report of Royal Commission on Railways*, 1867, p. xviii.

whether the railway acts did not require amendment, with a view of providing for a more effectual audit of accounts, to guard against the wrong application of the companies' funds.<sup>36</sup> This committee recommended, for the first time in railway history, the adoption of a uniform system of accounts and government audit.<sup>37</sup> No immediate legislation, however, took place.

These and other events which took place during the later forties and the fifties brought to light many new problems in railway finance, as a result of which additional provisions different from those contained in the Companies Clauses Act, 1845, were frequently introduced into railway bills. Accordingly, the Companies Clauses Act of 1863,<sup>38</sup> was enacted to extend the former clauses act. This act of 1863 contained four new principles, of which the first three had to do with railway finance. The first of these three related to the cancellation and surrender of shares, the second had to do with the creation of additional capital, and the third governed the creation and issue of debenture stocks.

During this period, the railways, in addition to their tendency toward extension, had a general policy of "buying up" every thing, in order to keep out all other lines from their own districts, at the same time invading as far as possible those of other lines.<sup>39</sup> This of course proved as costly to themselves as it was to their enemies. Heavy debts were contracted "for the purpose of securing old traffic against intruders and for developing new traffic for extensions and branches."<sup>40</sup> These struggles developed to such an extravagant extent that in spite of the favorable gross incomes, the dividends were low. Therefore, some shareholders "sincerely believed that if the Committee-rooms of the House of Commons were closed for five years, it would be the most important thing that had ever been done to protect railway property."

But Parliament apparently failed to realize clearly the serious nature of the situation. It had adopted a number of restrictions, but it failed to see to it that these restrictions were enforced.

<sup>36</sup> *Ibid.*

<sup>37</sup> Much attention was given to the question of uniform accounts. The subject will be taken up more fully in Chapters VII and VIII.

<sup>38</sup> 26 & 27 V. c. 118.

<sup>39</sup> *London Times*, February 9, 1863, p. 9.

<sup>40</sup> *London Times*, February 23, 1863, p. 8.

Consequently the speculative schemes as well as established companies found it quite easy to get around the Parliamentary restrictions. Men of straw were secured to sign up subscriptions for shares. Borrowed money was produced as paid-up portions of shares for deposit. Furthermore, not only was the legal limit of borrowing powers in many cases exceeded by the excessive issue of debenture, but a sort of note called Lloyd's bonds<sup>41</sup> was issued for amounts of money many times in excess of the statutory borrowing powers. As, according to the existing law, only the securities issued within the parliamentary limits were legal and hence valid, much confusion and difficulty followed the excessive issues, which in turn greatly damaged the credit of railway companies. Further money, consequently, was difficult to obtain.

Parliament, as most governments would do when in difficulty, appointed two select committees, one in 1863 and the other in the following year, to investigate the matter. These two select committees made a number of good recommendations for the betterment of railway finance, but no action was taken by Parliament to give effect to these recommendations until 1866, when the Companies Securities Act, 1866,<sup>42</sup> was passed, requiring, under penalty for failure, the railway companies to have registered officers and to deposit with the registrar of joint stock companies statements of their borrowing powers and half-yearly loan accounts. In the act were also set forth the particulars to be specified in these statements and half-yearly accounts. The act also prohibited railway companies from borrowing any money before depositing the statement of their borrowing powers just referred to. Moreover, the directors were required to declare "each for himself" on every mortgage deed or bond, or certificate of debenture stock, that the specific security was issued under the borrowing powers of the company as registered.

This measure, useful as it has proven to be, was far from being effective in dispelling the chaos. The "arcadian simplicity of the early times" where most railway bills before Parliament rep-

<sup>41</sup> They are a sort of railway exchequer bonds, representing what in the United States is called a floating debt, which is to be capitalized and paid off sometime or other. They bear the name of the parliamentary draftsman who originated them.

<sup>42</sup> 29 & 30 V. c. 108.



resented the enterprise and capital of a number of *bona fide* investors had long passed away. Instead, the "speculative element" prevailed. Subscription of railway shares actually became, in some cases, a process of "selling in the market of the powers conferred by the Legislature."<sup>43</sup> Contractors' schemes, instead of railway corporations, became the center of railway activity. These contractors' schemes soon became unable to support their undertaking, and they had to resort to the "finance" companies<sup>44</sup> for help. As the latter were nothing but paper creations of credit, founded on works that were not or could not be completed, and as these finance companies themselves offered no security, the result could be readily foreseen. Not only did the finance companies fail to bolster up the contractors' schemes, but they were both dragged down to mutual ruin.<sup>45</sup> Thus came the terrible collapse of 1867. There was so much confusion and distrust of what was taking place in the railway companies, "that all which the railway boards now say is searched between the lines; is suspected of ambiguity even when plain; is taken in a sense unfavorable to the railway when doubtful; is believed when it is against the board, and disbelieved when for the board."<sup>46</sup>

The panic was a bitter, but a beneficial lesson, as a result of which several fundamental principles were evolved. It was realized<sup>47</sup> that the difficulties were to a great extent caused by the mistaken view taken by Parliament originally in copying the provisions of the old canal bills for the regulation of railway finance, without taking account of the difference between the securities issued by the canals and those by the railways, and without weighing the consequences of so large an amount of permanent works being provided for by a floating instead of a fixed debt.<sup>48</sup> With the idea that a railway, like a canal or a turnpike

<sup>43</sup> London *Times*, May 15, 1866.

<sup>44</sup> These finance companies were formed for the avowed purpose of providing the capital which would enable the contractors to carry on their works. See Hansard, vol. 183, pp. 857-858.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Economist*, December 21, 1867.

<sup>47</sup> Hansard, vol. 185, pp. 784-785.

<sup>48</sup> Under the canal bills, the loans raised were precisely like mortgages of any other landed estates and were usually for seven or fourteen years, and the total amount was said to be small. Under the railway bills, altogether over £120,000,000 had been taken from the floating capital of the country

road, was to be open to all the world, so that anybody might place his own engines and carriages on the line and run them, on condition that he paid the company certain tolls for the privilege, Parliament, in granting a lien on the tolls, gave what it then considered to be as good a security as the mortgage on a landed estate.<sup>49</sup> Therefore, the security for railway debentures was made to cover only the permanent road-bed and the tolls, as railway charges were then called, of the undertaking; and the rolling stock was excluded.

The revelations of 1867 made clear the vast differences between the railways and the canals, and made Parliament realize the desirability of extending the lien of railway debentures to the rolling stock of the companies. Consequently the Companies Arrangement and the Debenture Holders Bill were introduced in the session of 1867. After considerable deliberation by a special committee the two bills were fused, as they were, into the Railway Companies Bill. The purpose of the bill, as outlined by the Duke of Richmond, was to give greater security to railway property and to all classes of shareholders.<sup>50</sup>

The procedure connected with the passage of this "finance" bill was entirely different from that connected with the bills of former years. It received a very thorough investigation in the committee as well as in both houses of Parliament. Indeed, the bill came out from the committee room in a very different form from that in which it was originally sent. The committee discussed every clause in the bill and had a division upon almost every one of the clauses. There was so much objection on all sides, that "if all their objections prevailed, there would not be a single clause left in the bill."<sup>51</sup>

The bill received royal assent in August, 1867, and became the Railway Companies Act of that year.<sup>52</sup> The novel, and by far the most important feature of the Act, was the provision made for the protection of the rolling stock and plant from seizure,

under much shorter dated securities, which were not mortgages in the usual sense of the term and could not then be held by trustees. According to H. C. E. Childer, Hansard, vol. 185, pp. 784-785.

<sup>49</sup> *Ibid.*, p. 786.

<sup>50</sup> Hansard, vol. 188, pp. 489-490.

<sup>51</sup> *Ibid.*, pp. 157-161.

<sup>52</sup> 30 & 31 V. c. 127.

thus affording additional security to the debenture-holders and insuring the convenience of the public. Besides providing for the creation and issue of debenture stock and new capital, and stipulating the rules governing the abandonment of railways, the act made it possible for the companies to adopt "schemes of arrangement" in case they became unable to meet their engagements.<sup>53</sup>

Moreover for the first time all restrictions upon the rate of interest on debentures were removed, and henceforth the companies were given the liberty to arrange and pay whatever rate of interest suited them best instead of being handicapped by the rate sanctioned by Parliament, as had been the case before.

Another new provision introduced was that no dividends should be declared until all accounts of the company were audited and a declaration made by the auditors to the effect that the proposed dividends were *bona fide*.

Just about this time, the Royal Commission on Railways of 1865-1867 made its report, in which special attention was called to the importance of a uniform system of accounts for the effective regulation of railway finance. Although its work has often been regarded as a failure,<sup>54</sup> its conclusions regarding the importance of uniform accounting have proven sound and of great value.

Almost simultaneously with the report of the Royal Commission, the railways and the public also became aware of the great importance of adopting some uniform system of accounts. Members of Parliament began to realize the inadequacy of the old system which permitted each railway to adopt its own system of accounts and to keep it in its own way. This irregularity in accounting was recognized not only as one of the causes of the panic, which was then not yet over, but was considered as undesirable in itself. It was quite generally recognized<sup>55</sup> that there was no cure for the mischief of delusion, nor any hope for railway property, except by the introduction of a principle of accounting in which nothing would be admitted as profit but the

<sup>53</sup> Hansard, vol. 189, p. 159; also see ss. 6-22 of Act.

<sup>54</sup> A. T. Hadley, *Railroad Transportation*, 1903, p. 169.

<sup>55</sup> *London Times*, November 8, 1867, p. 6.

surplus of actual receipts over actual expenditures. Consequently much agitation took place. A number of bills<sup>56</sup> for the regulation of railway accounts were introduced into Parliament as a result of which the Regulation of Railways Bill, 1868, was prepared and introduced by the Board of Trade. In preparing this bill, the Board of Trade not only gave careful consideration to the recommendations of the Royal Commission on Railways and took advantage of the experience of the previous years, but consulted frequently a number of railway accountants and other experts. Parliament also gave the measure unprecedented attention. It no longer, for the time being at least, had any fear of general and sentimental opposition to sane measures on this subject. The only question before it, therefore, was what should be done to restore to railways their lost confidence and what measures should be adopted to prevent future malversation in railway finance.<sup>57</sup>

Under such favorable circumstances, the bill received unusually careful consideration instead of the former party quibbles, and obtained royal assent in July, 1868. Henceforth all railway companies were required to prepare and present, semi-annually, a statement of accounts and balance sheets according to the forms perscribed. The officers were subjected to severe penalty for falsifying such accounts or statements. A system of government inspection and audit was also adopted.

The part of the act dealing with accounts and audit was at once recognized as of a novel nature, and hence received much discussion.<sup>58</sup> In spite of the fact that the act contained seven parts, of which only one dealt with accounts and auditing, it has been called, with good reason, an accounting act. Although the general usefulness of a uniform system of accounts was felt, the true import of such a system was not fully recognized. Much less was it recognized that this measure was to be the culmination of a century's work in legislation on railway finance. Nevertheless, this was the case. With the exception of the enactment of the Railway Regulation Act, 1871,<sup>59</sup> dealing with railway statis-

<sup>56</sup> The Railway and Joint Stock Companies Account Bill and the Companies Audit of Accounts Bill, etc.

<sup>57</sup> Hansard, vol. 191, p. 1536.

<sup>58</sup> *Economist*, March 21, 1868.

<sup>59</sup> 34 & 35 V. c. 78.



ties, and the insertion, since 1890, of some special clauses in the special acts governing the watering of stocks, no general legislative measure has been adopted since. Even the somewhat antiquated requirement of semi-annual accounts as well as the forms of these accounts adopted prior to 1871 have been in use until very recently. The system of accounts had, indeed, for some time been recognized as inadequate and a departmental committee with a number of well known economists, statisticians, and accountants as members, recommended in 1909 its modification. A bill was actually introduced to give effect to the committee's recommendation, but nothing had been done until 1911 when a new accounts act was passed.<sup>60</sup> Hence with little qualification, we may say that English legislation on railway finance was closed by the passage of the Railway Regulation Act, 1871, and with the exception of accounting what guides England to-day in regulating the financial affairs of her railways is exactly what guided her four decades ago.

To describe briefly the present scope of English legislative control of railway finance, we may say that before incorporation, the *entrepreneurs* are required to produce sufficient evidence that all the proposed share capital has been subscribed for by *bona fide* investors and that a deposit varying from 5 to 10 per cent of the total estimated cost of the undertaking has been made. The conditions under which the share capital may be raised and the privileges and responsibilities of the subscribers, as well as the rules governing the issue, cancellation, and surrender of such shares are prescribed in detail. Preference shares with a fixed rate of dividend may be issued according to the regulations laid down by Parliament, and ordinary shares may be "split" into preferred and deferred portions under certain conditions. Stock-watering is permitted, but it must be done in the open, and a record of such operations must be made in the company's accounts.

The companies are given power to borrow on mortgage to the extent of one-fourth of their total paid up capital. But such borrowing powers are not to be exercised until all the shares of the company are taken and one-half of the total on such shares has been paid up. Only the securities issued within the statu-

<sup>60</sup> 1 & 2 Geo. V, Cap. 34.

tory limits are regarded as legal securities, to enjoy the special privileges given by law to mortgages.

In incorporation and in raising additional capital, the companies are required to state in each and every case the purpose for which money is raised, and they are prohibited from applying any money so raised to purposes other than those approved by Parliament.

Annual accounts of all the incomes and expenditures are to be kept according to the uniform system of accounts adopted in 1868, as revised in 1911, and annual statistical returns must be made to the Board of Trade according to the rules prescribed in the Railway Regulation Act of 1871 and the Railway Companies (Accounts and Returns) Act of 1911. Government audit and inspection of the company's affairs may be resorted to under certain special circumstances.

Aside from these restrictions, the English railways are permitted to do as they please in managing their financial matters, subject to the common law of the country. But Parliament has power to pass any general law governing railway finance as it sees fit. Railway companies may change their original terms of incorporation, or vary the conditions under which their capital may be raised or spent, or effect any other modifications regarding financial affairs; but in each and every case, they are required to apply to Parliament for special permission.<sup>61</sup>

England, we have stated, undertook to regulate railway finance long before some other countries realized the importance of this branch of government activity. Thus, it may well be asked in the beginning, (1) Why did England deem such actions necessary? and (2) what led her to adopt her unique policy? The first question may be answered by stating that England has long recognized that public advantage requires that railways should

<sup>61</sup> In practice, the permission can usually be obtained without any difficulty, if there is no serious opposition. The following passage from an editorial of the *Economist*, April 9, 1870, to a large extent expresses the situation:

The "position (of Parliament) towards applicants for powers is very simple. It is the mere dispenser of an authority which the applicants wish to possess, and which it confers upon them in order that the country may gain. Both parties are quite free in the matter. The companies to make a profit apply for the power, and Parliament believing that its constituents will gain, assents to the demand."

yield reasonable returns to those who invest in such undertakings and that a certain amount of government interference is required to help investors to identify the securities issued by railway companies, which they are asked to take up. To raise a sufficient barrier against swindling operations and to protect the public from "bubble" schemes, seem to be objects underlying all the legislative actions of Parliament.

In answer to the second question as to why Parliament has adopted its particular policy in regulating railway finance, it may be said that although Parliament attempted to adopt more stringent measures for realizing the purposes just referred to, it was constantly reminded of the fact that England is a country of free enterprise. The general principle was well established that the state should interfere as little as possible with what is being or is capable of being performed by private enterprise. There has been even considerable cry that "the cost of a railway is a matter with which the public and Parliament have no concern."<sup>62</sup> The idea that an enlightened view of their own interest would always compel railway officers to have due regard to the general advantage of the public has always been kept prominently before the attention of the government. Moreover, Parliament is an elective body, and has consequently been influenced by popular conceptions in dealing with such scientific questions as the regulation of railway finance.

Moreover, by the time Parliament had fully realized the importance of more strict regulation, its *laissez faire* rules had been established, and an enormous amount of capital already invested in the railway business. Parliament therefore felt that it would be unjust to withdraw in any way the early concessions which led to the investments. The constant desire to make railway investments safe securities on the one hand and to interfere with railway management as little as possible on the other, seems to have caused Parliament to adopt its unique system of regulation of railway finance which seems to differ from that of all other countries.

<sup>62</sup> London *Times*, June 4, and June 12, 1886.

## CHAPTER II

### LEGISLATIVE SUPERVISION OF CAPITALIZATION

#### A — SHARE CAPITAL

The greater part of English railway capital is raised by the issue of three classes of instruments,<sup>1</sup> varying in security and interest. The net income is liable in the first instance to the claims of the debenture holders, then to those of the holders of preference shares, and ultimately to those of the holders of ordinary shares.<sup>2</sup>

In general a railway raises its capital in the first instance by issuing ordinary shares. When this class falls to a discount, or for some other reason, the company has recourse to inviting subscriptions to preference or guaranteed shares. The holders of the latter class of stocks are, to a certain extent, not only proprietors but semi-creditors of the company, in that the net income of the company is first of all secured to them in priority over the ordinary stock holders. When the ordinary and preference stock are both taken up and, theoretically, paid for in cash to the amount of the nominal value, then the company may use its authority, granted by Parliament, to borrow money on debenture, mortgage, or otherwise, to the extent of one-third of the amount raised by shares or one-fourth of the total capital.<sup>3</sup>

Among the several important features into which the parlia-

<sup>1</sup> Formerly railway securities were divided into five classes: ordinary, guaranteed, preferential, loans, and debenture stock. About 1870, the second and third classes as well as the fourth and fifth classes were merged. In addition to these principal classes, there are also various subordinate issues such as rent charge stocks which are practically guaranteed stocks, and preferred and deferred stocks. The latter two, however, are but components of the ordinary stock. There is another very rare class (according to Wm. J. Stevens, *British Railways*, p. 4), called the contingent right stock which shares in dividends with the ordinary stock after a certain rate on the latter has been paid.

<sup>2</sup> See *London Times*, August 27, 1871.

<sup>3</sup> Cf. John Fraser, *British Railroads*, 1903, pp. 26-27.



mentary committee on railway bills would make inquiry before recommending the passage of such bills were the financial affairs of the applying company.<sup>4</sup> They would scrutinize, first of all, the amount of the capital to be raised by the company, whether by the creation of shares or by loans. Thus besides considering the location and nature of the line, special engineering difficulties, expected traffic, etc., the committee on railway bills in 1844, as in the case of the Brighton and Chichester Railway, considered carefully the following questions:<sup>5</sup>

1. The amount of the proposed capital and the amount of loans to be raised.

2. The amount of shares subscribed for and the deposits paid thereon.

3. The names and places of residence of the directors with the amount of shares taken by each.

4. The number of shareholders who might be considered as having a local interest in the line, and the amount of capital subscribed by them, together with their names and addresses.

5. The number of other shareholders and the capital taken by them.

It was only after being satisfied with respect to these points as set forth in the bill, that the committee would recommend its passage. The manner in which these provisions governing share capital of railway companies were embodied in the special acts is illustrated by the following passages from the London and Croydon Railway Act of 1837:<sup>6</sup>

“CXXXVI. And whereas the probable expense of making the railway and other works hereby authorized will amount to the sum of £1,800,000, and sums exceeding that amount have been subscribed under the subscription contracts . . . ; be it enacted, That, notwithstanding any thing in the several subscription deeds or contracts . . . , the capital of the company hereby incorporated shall be £1,800,000 divided into 36,000 shares of £50 each; and that such shares shall, as soon as conveniently may be after the passing of this act, be apportioned and divided to and amongst the several provisional Committees or provisional Directors . . . , in the proportion herein-before mentioned. . . .”

The act further permitted the company to increase the number of shares by diminishing the amount in value of each share

<sup>4</sup> *Railway Times*, October 5, 1839.

<sup>5</sup> *Ibid.*, April 25, 1844.

<sup>6</sup> Hereafter called the Croydon Railway Act.

in order to facilitate the allotment of such shares among the subscribers.

As these clauses became numerous and complicated Parliament consolidated them and a number of other provisions into general provisions to be applicable to all companies. Thus in the Companies Clauses Act, 1845, provisions were made to the effect that the capital of the companies should be divided into shares of the prescribed number and amount and that such shares should be numbered in arithmetical progression.<sup>7</sup> All the provisions as being outlined in the private act just referred to were also set forth with precision. Further provision was made to enable railway companies to convert their borrowed money into share capital under certain conditions.<sup>8</sup>

In England, as in other countries, the railways were given compulsory power to take land; but they were not allowed to exercise such power until they produced a certificate under the hands of two justices certifying that the whole of the capital or estimated sum for defraying the expenses of the undertaking had been subscribed under contract binding upon the subscribers.<sup>9</sup> Companies were also forbidden to reduce their capital by the payment of dividends;<sup>10</sup> but they might reduce their capital in case the commissioners of railways authorized the abandonment of a part of their undertaking and the commissioners favored such a reduction of capital.<sup>11</sup>

As has been referred to, the Companies Clauses Act of 1845

<sup>7</sup> Companies Clauses Act, 1845, 8 V. cap. 16.

<sup>8</sup> "56. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special act, to raise the additional sum so authorized to be borrowed, or any part thereof, by creating new shares of the company, instead of borrowing the same, or having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital . . . shall take place without the previous authority of a general meeting of the company.

"57. The capital so to be raised by the creation of new shares shall be considered a part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on nonpayment of calls, or otherwise, . . ."

<sup>9</sup> Lands Clauses Act, 1845, 8 V. cap. 18, ss. 16-17.

<sup>10</sup> Companies Clauses Act, 1845, s. 121.

<sup>11</sup> Abandonment of Railways Act, 1850, 13 & 14 V. cap. 83, s. 28.

required that the capital of the companies should be divided into shares of the prescribed number and amount. The holders of the shares were entitled to enjoy the proprietary privileges according to the number of shares owned,<sup>12</sup> and were at liberty to transfer their shares. A provision, however, was inserted in the Companies Clauses Bill, 1845, to the effect that no shareholder should make any transfer of shares in respect of his subscription until he had paid all calls for the time being due on such shares held by him.

This provision met with much opposition in Parliament. It was objected to on the ground that it was not only too hard a measure, but it would prevent the solvent shareholder from disposing of his shares until all the calls were paid up, thus giving an advantage to the insolvent holders, as it did not matter much to the latter whether he effected a transfer or not. It was contended that a call might be made for a particular day, and it would not be proper to prohibit the transfer of shares in the interim.<sup>13</sup>

To this objection, it was retorted that a call once made would form a debt, and hence should be settled first. It was further urged that the adoption of the clause would put an end to the extremely harmful practice of railway speculation which was very common at the time. These speculators, it was pointed out, would often enter into engagements without the least probability of their ever being able to meet them; and when they became deeply involved for calls, they would shake off their responsibility by transferring their shares to men of straw. Thus after considerable discussion, the clause was agreed to.<sup>14</sup>

Further provisions, however, were made in the early special acts, to the effect that transfers of shares and stocks should be made by deed and should be registered in the registers of the companies concerned, and that until such registration was made,

<sup>12</sup> On account of the fact that many people subscribed to shares without any idea of ever paying for them, a provision was made in the Railway Construction Facilities Act of 1864 (27 & 28 V. cap. 121, s. 28) to render it unlawful for any company to issue any share created under the authority of a certificate of the Board of Trade nor should any such share vest in the person accepting the same, unless and until a sum not less than one-fifth part of the amount of such share had been paid up.

<sup>13</sup> Hansard, vol. 77, p. 929.

<sup>14</sup> *Ibid.*

the seller of the share should remain liable for all the calls and the purchaser should have no part or share of the profits of the undertaking, nor any voting power in respect of such transferred shares.<sup>15</sup> Forms of certificates of both shares and transfers of shares were also prescribed.

So far so good; but Parliament seemed to have failed at the most important point. It did not stipulate the time within which such registration should be executed. When the prospects of a company were good, the proviso that failure to register would deprive the purchaser of his proprietary privileges was sufficient to insure proper expeditious registration, but when the prospects of a company were bad, it was entirely different. Consequently, purchasers of railway shares often would hold the transfer in their possession so long as it suited their convenience; the seller of those shares having no means of compelling the purchasers to register the share, would remain always liable for the payment of the calls. The law subjected these sellers to the liability of paying calls, but afforded them no means of repossessing themselves of their shares.<sup>16</sup> Consequently the original holders having disposed of their shares in the market and after the lapse of years when call upon call had accumulated to a frightful amount, were sometimes subjected to legal proceedings, "because none of the many parties through whose hands these shares had subsequently passed had chosen to render themselves liable by conforming with the requirements of the company's act."<sup>17</sup> The brokers also took advantage of this unfortunate situation by arranging schemes whereby it was made possible that from the moment the deed was stamped for the first time, the transfer should pass from hand to hand possibly for many months without the payment of any duty upon the several transactions subsequent to the first.<sup>18</sup>

The inconvenience resulting from such illegal transfer of shares was seriously felt.<sup>19</sup> Therefore, it was urged before the

<sup>15</sup> Companies Clauses Act, 1845, ss. 14-15, and s. CLV of the Croydon Railway Act, 1837.

<sup>16</sup> Evidence before the select Committee of the House of Commons, 1839. *Railway Times*, November 9, 1839.

<sup>17</sup> *Railway Times*, November 9, 1839.

<sup>18</sup> Second Report of select committee of the House of Commons, as appeared in *Railway Times*, October 5, 1839.

<sup>19</sup> *Railway Times*, November 9, 1839.



select committee of 1839 that some measure should be adopted to limit the period within which transfers of shares and stocks should be registered.<sup>20</sup> It was also suggested that unless registration was made within the specified time, the transfer should lose its validity and the share should revert to the selling party.<sup>21</sup> No action, however, was taken by Parliament to effect these reforms. But in 1850, a provision was made in the Abandonment of Railways Act of that year,<sup>22</sup> again providing that unless a share had been duly registered and calls on it fully paid, it would not entitle its holder to the proprietary privileges. No provision, however, was made to stipulate a uniform limit of time within which such registration should take place. Hence the regulations governing the registration of transfer of shares remained as defective as before, and nothing further has been done since.

The payment of calls also received much consideration in 1845. Companies were empowered by the Companies Clauses Act of that year<sup>23</sup> to make calls for the payment of money upon the shareholders by serving on each shareholder a notice at least twenty-one days before making the call; but no successive calls should be made at less than the prescribed intervals. The aggregate amount of calls made in any one year was also prescribed. Every shareholder was held liable to pay the amount of the calls made in respect of his shares; and in case of failure to pay such calls on or before the proper time, he should be liable to be charged with interest for such unpaid calls at the legal rate. The railway companies were further empowered to sue and recover with interest from such defaulting shareholders the amounts of the calls due, for which purpose the production of the register of shareholders was *prima facie* evidence of such defaulting parties being shareholders of the company and of the number and amount of their registered shares.

Moreover, the directors after serving proper notice might at any time after the expiration of two months from the day appointed for payment of such calls, declare the forfeiture of such defaulted shares on which calls were due and unpaid. After

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> 13 & 14 V. cap. 83, s. 6.

<sup>23</sup> 8 V. c. 16, 21-28.

such declaration of forfeiture being confirmed by a general meeting the company might sell such forfeited shares.<sup>24</sup> To safeguard the interest of the shareholders, however, it was provided that no<sup>25</sup> company should sell or transfer more of the shares of any such defaulters than was sufficient to pay the arrears, etc., then due from them. In case the money produced by any such sale was more than what was needed to pay for such arrears, interests, etc., the defaulters might claim the surplus.

The matter of cancellation and surrender of shares was further amplified by the Companies Clauses Act, 1863,<sup>26</sup> so as to give the companies greater liberty in such matters and to make the payment of calls of even greater consequence to the shareholders.<sup>27</sup>

Provision was also made to the effect that the last registered holders of such forfeited shares should not only be precluded from all rights and interest in respect of such shares, but should also be held liable to pay all arrears of calls, interest, and expenses due in respect of the share at the time of the cancellation, notwithstanding such forfeiture.<sup>28</sup>

Moreover, companies were authorized to cancel forfeited shares with the consent of holders and to accept, on such terms as they saw fit, surrenders of any shares which were not fully paid up; but they were forbidden to "pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any shares."<sup>29</sup>

<sup>24</sup> *Ibid.*, ss. 29-33.

<sup>25</sup> *Ibid.*, ss. 34-35.

<sup>26</sup> 26 & 27 V. c. 118, s. 4.

<sup>27</sup> Section four of this act provides: "Where any share . . . is after the passing of this act declared forfeited under and in pursuance of the provisions . . . in The Companies Clauses Consolidation Act, 1845, . . . and the forfeiture is confirmed by a meeting in accordance with the same provisions, . . . and notice of the forfeiture has been given, — then, . . . if the directors of the company are unable to sell the share for a sum equal to the arrears of calls and interest and expenses due in respect thereof, the company at any general meeting held not less than two months after such notice is given may, in case payment of arrears of the calls, interest and expenses due in respect thereof is not made by the registered holder of the share before the meeting is held, resolve that the share instead of being sold shall be cancelled, and the share shall thereupon be cancelled accordingly."

<sup>28</sup> 26 & 27 V. c. 118, s. 6.

<sup>29</sup> 26 & 27, c. 118, s. 10.

When a railway company desired to raise additional capital, it should apply to the Board of Trade for permission,<sup>30</sup> and the latter after being satisfied that the applying company had complied with the requirements of the established rules governing notices, etc., might settle a "draft of certificate" to authorize the company to raise the prescribed amount of additional capital for the purpose set forth in the certificate. For the purpose of raising such additional capital, the company was at liberty to issue new shares or stock or to make loans, unless the certificate provided to the contrary.<sup>31</sup> New shares or stocks issued under such circumstances, or for the conversion of its loans into share capital, as well as for raising additional sums of money in lieu of borrowing should be considered as a part of the general capital and should be subjected to the same provisions in all respects as the existing shares, except as to the time for making calls and the amounts of such calls, which the company was authorized to determine as it saw fit from time to time.<sup>32</sup>

In order to safeguard the interests of the shareholders, it was provided by the Companies Clauses Act of 1845<sup>33</sup> that if at the time when the augmentation of capital took place the existing shares were at or below par, the new shares might be of such amount and issued in such a manner as the directors saw fit, but that if at the time of the augmentation the existing shares were at a premium, then, unless it was otherwise provided by the special act of the company, the sum to be raised should be divided into shares of such amount as would conveniently allow the same to be apportioned among the shareholders in proportion to the existing shares, and such new shares should be offered to the existing shareholders in the proper proportion by letter.

The latter provision, beneficial as it was to the shareholders, seemed to have been more or less abused by some of the shareholders through their neglect in acknowledging their acceptance of such offers. Consequently, a similar provision was made in the Companies Clauses Act, 1863,<sup>34</sup> with the proviso that in case the company's offer to any shareholder was not accepted within

<sup>30</sup> Railway Companies Act, 1864, 27 & 28 V. cap. 120, s. 3.

<sup>31</sup> *Ibid.*, s. 4 and Schedule iii.

<sup>32</sup> Companies Clauses Act, 1863, 26 & 27 V. cap. 118, s. 12, and Companies Clauses Act, 1845, 8 V. cap. 16, ss. 56-57.

<sup>33</sup> Companies Clauses Act, 1845, 8 V. cap. 16, ss. 58-60.

<sup>34</sup> 26 & 27 V. cap. 118, ss. 17-21.

the time limit and in the absence of any special arrangement to extend such time limit, then the company might dispose such new shares and stocks in whatever way it saw fit, "but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof." The latter provision prohibiting the disposal of shares at a discount, however, was repealed afterwards.

In several of the bills of the session of 1859 and 1862, power was sought to accept surrenders of shares liable to be forfeited, and to extinguish, without sale, the interest of the holders of shares which had become forfeited, and thereupon to cancel or merge the surrendered and forfeited shares, and in lieu of such cancelled shares to issue new shares to an aggregate amount, limited in some cases to that remaining unpaid in respect of the cancelled or merged shares, and in others extending to the aggregate amount of the whole of the cancelled or merged shares.<sup>35</sup> The Board of Trade thought that such irregularities were undesirable, and during those years repeatedly urged that the aggregate amount of the new shares which might be issued in lieu of the old shares should in all cases be restricted to the aggregate amount remaining unpaid in respect of the cancelled or merged shares, so that the sums which had been already raised by means of the old shares might not be raised a second time. It believed that if further sums were required for the companies' undertaking, it would be better that authority to raise them should be sought as a power to raise additional capital, for by so doing the nominal capital of the company would correspond with the amount which the company would have been authorized to raise by shares if the cancellation or merging did not take place.<sup>36</sup>

Following these repeated recommendations of the Board of Trade, Parliament inserted a clause in the Companies Clauses Act, 1863,<sup>37</sup> to the effect that the companies might issue new shares in lieu of cancelled or surrendered shares; but the aggregate nominal amount of such new shares should not exceed that of the old shares after deducting the amount actually paid up in respect of such old shares.

<sup>35</sup> Report of Board of Trade on Railway Bills, 1861, pp. 22-23.

<sup>36</sup> *Ibid.*

<sup>37</sup> 26 & 27 V. c. 118, s. 11.



By the same act,<sup>38</sup> railway companies, after having created new shares or stock, were permitted to cancel such new shares or stock should they decide not to issue the whole of such new shares.

As stated above, between the ordinary shares and the debentures or loans of a company are the preference shares. The latter bears a specified rate of dividend which shall be met out of the company's net income before any ordinary shareholder may receive any dividend. Prior to 1863, the interest or guaranteed dividend on these preferential shares was cumulative. If it is not paid in one year, then it must be paid together with the dividend due in the succeeding year in full, before the ordinary stocks could receive anything. But in the Companies Clauses Act, 1863,<sup>39</sup> a provision was inserted to the effect that preference shares should be entitled to dividends only out of the profits of each year; and if any year ending on the 31st of December, "there are not profits available for the payment of the preferential dividend . . . for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company."

With regard to the creation and issue of preferential stocks, the same act<sup>40</sup> provided that where any company was authorized by any special act to raise any additional sum by the issue of preference shares or stock with the sanction of a general meeting it might create and issue (according as the authority given by the special act extends to shares only, or to stock only, or to both) such shares or stock as the company from time to time saw fit. It was, however, further provided that such stock should not affect any guarantee, or any preference or priority in the payment of dividend or interest, granted by the company under, or confirmed by, any previous act.

The act also required that the terms and conditions to which any preference share or stock was subjected, should be clearly stated in the certificate of the preference share or portions of the preference stock.<sup>41</sup>

<sup>38</sup> *Ibid.*, s. 16.

<sup>39</sup> 26 & 27 V. c. 118, s. 14.

<sup>40</sup> 26 & 27 V. cap. 118, s. 13.

<sup>41</sup> Companies Clauses Act, 1863, 26 & 27 V. c. 118, s. 15.

After the adoption of those provisions regarding preference shares, there was for a number of years a constant tendency for the proportion of preferential capital to grow more rapidly than that of the ordinary capital. Thus in 1858 the ordinary and preference capital were outstanding in the proportion of 56 to 44, while in 1870 and 1871 the relative proportions were reversed, becoming 43 to 57 and 42 to 58 respectively.<sup>42</sup> Such changes might have been brought about by two entirely different causes. In the first place, when railway enterprise became established, it might be reasonably expected that the preference capital would tend to increase more rapidly than the ordinary. When a railway pays large dividends on its ordinary shares, it can raise money on easy terms by issuing preference or debenture stocks at fixed rates of interest. This seems to have been largely the case in England. On the other hand, when a company pays little or no dividend on its ordinary shares, it will be compelled to resort to the issue of such preferential shares for raising money, in order to avoid heavier sacrifices.

Another class of shares or rather another nomenclature given to the ordinary shares, known as preferred and deferred shares, has come into vogue since 1868. These, in reality, do not constitute any separate class of shares, but simply represent two divisions into which the ordinary shares are divided. All the rules governing the ordinary shares are also applicable to these preferred and deferred stocks, except that special rules have been adopted to govern the process of, and the conditions under which, the division may be executed.

The first known instance of "stock splitting," by which the ordinary shares are divided into preferred and deferred, took place in 1854 in the case of the Great Northern.<sup>43</sup> During that year £12 having been paid on each £20 share of that Company, a panic seized upon the public mind and grave doubts were entertained as to whether the boldly competitive scheme of that company could be successful in the face of adverse circumstances. At the same time the London and North-Western authorities were not slow to take advantage of the situation in making things uneasy for their competitors. In order to push the thing

<sup>42</sup> *Capt. Tyler's annual report to the Board of Trade*, 1873, p. 4.

<sup>43</sup> *Railway Times*, May 2, 1868.

along, the directors of the Great Northern adopted the proposition, — not to forfeit the shares and confiscate the whole of the payments thereon, — but to lay aside £10 for the defaulting subscribers, and to give the remaining £2 as a bonus to future subscribers with the whole of a dividend up to 3%, calling the holdings of the old subscribers, B., or deferred, and those of the new subscribers, A., or preferred stocks. This procedure speedily restored confidence in the undertaking and carried it through its vicissitudes.

This affair received considerable attention; but it was not until 1868 that stock splitting became a burning question. In that year, the South Coast and other companies applied for power to divide their ordinary stocks into preferred and deferred ordinary, at the option of the shareholders.<sup>44</sup> Consequently strict regulations were adopted in the Regulation of Railways Act of that year<sup>45</sup> specifying with great elaboration the precise conditions under which the division of stocks might be effected.

There was no debate on this clause; but there was one in the House of Lords on a similar clause of the South Coast Railway Bill of that year just referred to, from which the clause in the Regulation of Railways Act was copied. When the South Coast Railway Bill was in the House of Lords, the clause giving power for splitting stocks was struck out. But when the bill was considered in the House of Commons, the original clause was reinserted in the bill. Finally when the bill came back to the upper house of Parliament again, a motion was again made to omit that clause. Lord Redesdale very strongly opposed the division of stocks, on the ground that such a practice would favor stock jobbing.<sup>46</sup>

On the other hand, the Duke of Richmond, who was then president of the Board of Trade, supported the clause on general principles. He maintained that "the tendency of Parliament had been not to interfere with the financial arrangements of these companies; providing, of course, that Parliament saw that no injustice was done to mortgages, or other parties. . . . He

<sup>44</sup> *Evidence before Select Committee on Railway Stock Conversion*, 1890, p. 37.

<sup>45</sup> 31 & 32 V. c. 119.

<sup>46</sup> Hansard, 193: 1545.

further claimed that to prohibit the splitting of stocks was entirely opposed to the recommendations of the Railway Commission,<sup>47</sup> which went very fully into the question, and gave it as their opinion that it was the more judicious course for Parliament to relieve itself from interference in the financial affairs of railway companies. Instead of proving injurious, he believed the proposed subdivision of stocks would tend to give all parties concerned an additional interest in seeing that the directors did their duty.<sup>48</sup>

After considerable discussion, the clause was adopted with thirty contents and seven non-contents.<sup>49</sup> Since then the regulations governing the splitting of shares have been elaborated but not modified, and railway companies have been given the liberty to divide their shares under these or similar regulations.<sup>50</sup>

Commenting upon this clause, the *Railway Times*<sup>51</sup> said that it was certainly to be regretted that "the Legislature should have lent itself to a system capable of further propagation of so vile a mischief," and it concluded that "we have only to hope that the nuisance may become so prevalent as to ensure its own corrective."

But the hope of the *Railway Times* was not realized. On the contrary, not only has the practice of "splitting" spread, but it has also developed into the widespread "stock-watering" which was not even thought of at the time when Parliament first gave its permission to stock splitting. A comparison of the following clauses of a railway bill passed in 1890<sup>52</sup> with the part of the Regulation of Railways act, 1868, quoted above, may serve to show the vast difference between the regulations governing "splitting" as adopted in 1868 and the degenerated practice which took place afterwards. The second clause of the Bill of London and South-Western Railway passed in 1890 provides:

The company would create ordinary stock of two classes,—(1) preferred 4% ordinary stock, and (2) deferred duplicate ordinary stock, both classes

<sup>47</sup> He probably referred to the Royal Commission on Railways, 1867.

<sup>48</sup> Hansard, 193: 1545.

<sup>49</sup> Hansard, 193: 1549.

<sup>50</sup> In the Model Bills and Clauses of the House of Lords, 1909, eight clauses (pp. 24-25) were devoted to the regulations governing the division of stocks.

<sup>51</sup> *Railway Times*, August 8, 1868, p. 819.

<sup>52</sup> *Railway Times*, May 17, 1890.



of which to be in substitution of a corresponding amount of paid-up ordinary stock; that is to say, £100 of the preferred and £100 of the deferred ordinary stock should be substituted for every £100 of the existing ordinary stock.

But, it may be remembered, what was permitted in 1868 was a mere "splitting," — "preferred and deferred ordinary stock shall be issued only in substitution of equal amounts of paid-up ordinary stock," while the later practice was actually "duplication," wherewith stock certificates bearing a face value of £200 were given for every £100 paid in.

The chief reason which led the companies to indulge in stock splitting was that they thought the divided stocks would command higher prices than the solid property. But the *Railway Times* both in 1868 and 1891, the years in which stock splitting began and reached its highest point of development, respectively, have proven by the market quotations of the two kinds of stocks of several companies that the expectation of the companies was by no means well founded in many cases.<sup>53</sup> On the other hand, the same paper<sup>54</sup> showed that much confusion resulted from the splitting of stocks. Investors were in many instances led to take up one section of these divided stocks under the delusion that the deferred portion (as in the case of the Great Northern, the originator of the scheme, just referred to) had been previously paid up. As this was far from being the true state of affairs in many instances, much disappointment and suspicion arose. Therefore, Parliament was blamed for being too ready to comply with "every request made to it by speculators in the most desperate condition."<sup>55</sup>

In England it has been held from the beginning of railway legislation<sup>56</sup> that it is not the legitimate business of a railway company to apply to one purpose the funds which have been raised for another and that it was the duty of railway companies to keep up the value of their capital assets—no dividends may be paid out of capital.<sup>57</sup> In the early railway acts

<sup>53</sup> See *Railway Times* for November 14, and November 28, 1868, and May 23, 1891, p. 606.

<sup>54</sup> *Railway Times*, May 2, 1868.

<sup>55</sup> *Ibid.*

<sup>56</sup> See *Report of Committee on Railway Companies Powers*, 1864, p. 58.

<sup>57</sup> Section CLXX of the Croydon act of 1837 provided "That all the money to be raised by the said company by virtue of this Act shall be laid

of incorporation provisions were made as to the purpose for which the company was incorporated and the proper mode of applying the capital raised. Thus in the first Companies Clauses Act<sup>58</sup> a specific provision was made to the effect that all the money raised by the company should be applied, first, in paying the costs and expenses incident thereto, and, second, in carrying the purposes of the company into execution. It was further provided by that act that, unless expressly provided to the contrary, companies might receive and apply to the purpose of the company any calls to be made, notwithstanding mortgages.<sup>59</sup>

Thus both the private and the public general acts required that the company should first of all apply its capital to the payment of expenses already incurred for forming the company, and then to the execution of the purpose for which the company was incorporated.

The financial difficulties and pressure for capital caused by the extravagant extension of railways during the forties led to considerable violation of the foregoing provisions. Therefore the Lords' committee of 1849 was instructed to devise means to guard against the application of funds to any other purpose than those authorized by Parliament. This committee recommended that railway companies should be required to explain in their capital accounts not only how money was raised but the undertakings to which it was applicable and the manner in which it was actually spent.<sup>60</sup>

During the latter part of the fifties and the first part of the sixties, in many railway bills for constructing new works, provisions were not made for raising additional capital; but the companies were permitted to apply to the new works any money out and applied, in the first place, in paying and discharging all costs and expenses of applying for, obtaining, and passing this Act, or preparatory or relating thereto, incurred; . . . and the remainder of such money shall be applied in and towards purchasing lands, and making and maintaining the said railway and other works, and in otherwise carrying this Act into execution; and that the expenses incurred by the several provisional committees or boards of directors for the said . . . lines . . . shall be raised and paid by the subscribers to the said several lines . . . in proportion to the amount of their respective subscriptions. . . ."

<sup>58</sup> 8 V. c. 16, s. 65.

<sup>59</sup> 8 V. c. 16, s. 43.

<sup>60</sup> *Report of Royal Commission on Railways*, 1867, p. xviii.

which they might have been authorized to raise by previous acts and which might not be required for the purposes for which the money was originally raised. In order to protect the shareholders from the danger that might arise from the application of the funds of railway companies to purposes not sanctioned by Parliament and not in contemplation at the time when their powers were obtained, both Parliament and the Board of Trade thought that it was very important to take advantage of every suitable opportunity to ascertain and limit the amount of money that might be raised and to define clearly its application.<sup>61</sup> Moreover, the Board of Trade emphasized this point for several years successively beginning 1859.<sup>62</sup>

When the Companies Clauses Act of 1863 was passed, a clause was devoted to specifying the application of money raised by the issue of debenture stocks, thus giving effect to the recommendation of the Board of Trade.<sup>63</sup> It enacted that money raised by debenture stock should be applied exclusively either in paying off money due by the company on mortgage or bond, or else for the purposes to which the same money would be applicable if it were raised on mortgage or bond.

In the Railway Construction Facilities Act of the following year,<sup>64</sup> provision was again made to the effect that railway companies "shall apply every part of the money raised only for purposes for which it is by the certificate (of the Board of Trade) authorized to be applied."

In practice, however, there seemed to be considerable violation of these rules, especially by the smaller lines. A striking example may be found in the case of the Brecon and Merthyr Railway Company. After having repeatedly violated the law in raising its capital,<sup>65</sup> this company authorized the issue of £20,000 for the

<sup>61</sup> *Board of Trade annual report on Railway Bills*, 1860, p. 22.

<sup>62</sup> *Ibid.*, 1863, p. 19.

<sup>63</sup> 26 & 27 V. c. 118, sec. 32.

<sup>64</sup> 27 & 28 V. c. 21, sub-secs. (4) and (5) of sec. 29.

<sup>65</sup> This railway about 66 miles long was originally contracted to be constructed by a certain Savin at £10,000 per mile; but act after act had since been obtained by its directors and the contractor for increasing the capital, until, instead of the original authorized capital of £700,000, the shares and debentures issued to the contractor for its construction amounted to £2,000,000. In this amount there were no less than ten kinds of preference shares, each ranking in order of date, and fourteen issues of debentures

construction of, and with a special hypothecation on, a branch called the Ivor & Dowlais, which latter was authorized in 1865 but not yet commenced in 1867. It was also found that the act of 1865 had already authorized the creation for the construction of this line, of shares and debentures to the amount of £20,000 and had specially provided that the money should only be applied of this line of shares and debentures to the amount of £20,000 and had actually been issued under the name and were then existing; but that the money was not applied to the line, which was left entirely untouched.

Moreover, this kind of irregularities seemed to have continued for some time. Thus in 1869 a complaint, which had many parallels in railway affairs, was made against the Caledonian Railway by the Forth and Clyde Navigation Company, with whose undertaking and many others the Caledonian had amalgamated. The charge was that the absorbing company had applied the money raised under the special borrowing powers of the particular undertaking to general purposes, to the amount of more than £100,000, in breach of an engagement with the absorbed company. In this connection, the *Economist* said<sup>66</sup> that in many cases even where there was not any apparent objection, the public had been "not a little injured" through the diversion of the borrowing powers conferred. It further said that "if the Legislature lays down rules . . . in order to secure the proper execution of undertakings which it authorized and which it has a claim to see executed by virtue of the privileges conferred . . . care should be taken to have the rules put in force, and a breach of them . . . ought to be rendered impossible."

Another form in which capital has been applied to purposes other than those authorized by Parliament is the payment of dividend out of capital. This practice has been prohibited since the early thirties. Thus in the Croydon Act of 1837 the pro-

also ranking in order of creation. Then the company again obtained from the Board of Trade, under the general Railway Act, 1864, and without any sanction for new lines, powers to create £570,000 of fresh preference stock and £190,000 of fresh debentures stock for which they could not find any market. See *London Times*, November 13, 1867, p. 4.

<sup>66</sup> *Economist*, November 6, 1869.



vision was made <sup>67</sup> to the effect that no dividend should be made exceeding the net amount of clear profit at the time being in the hands of the company, nor whereby the capital of the said company should in any degree be reduced.

During the forties there seemed to be a need for a relaxation of these restrictions. During that period many railway companies received their capital by instalments and had to pay interest pending construction.<sup>68</sup> When calls were made at a time when a high rate of interest could be obtained the subscribers were unwilling to meet such calls. "To obviate this difficulty" it was suggested that "it was not unreasonable for railway companies to resort to the unbusiness-like practice of allowing interest <sup>69</sup> on calls before a railway is opened, and consequently before it has any revenue. The interest was therefore charged to capital, and served to swell the capital expenditures."<sup>70</sup> It must be stated that in some cases the payment of such "interest" out of capital during construction appeared necessary, for in such cases it was "utterly ridiculous to hope for the payment of deposits unless interest be allowed upon them during the construction of the line. Men cannot afford to lock up their capital in a total sacrifice of present results for the chance of any future proceeds, however abundant."<sup>71</sup> In still other cases, the practice was known as being advantageous to all concerned.

On the whole, however, it seemed that the payment of dividends out of capital was not desirable. It was well known as Lord Somerset pointed out <sup>72</sup> that many companies had gone on paying dividends out of their capital stock, as if they were in a most flourishing condition. These companies sometimes went on paying dividends out of their capital until their capital no longer existed.

Under such circumstances, Parliament saw fit to insert a clause in the Companies, Clauses Act, 1845,<sup>73</sup> stipulating that "the com-

<sup>67</sup> 1 V. c. cxix, s. CXCIIL.

<sup>68</sup> Hansard, 78: 48.

<sup>69</sup> Interest here is used really in the sense of dividend.

<sup>70</sup> *Railway Times*, April 27, 1844.

<sup>71</sup> *Ibid.*, July 25, 1846.

<sup>72</sup> Hansard, 78: 48-49.

<sup>73</sup> 8 V. c. 16, s. 121.



pany shall not make any dividend whereby their capital stock will be in any degree reduced.”

The general interpretation given to this clause, as shown by the debate in Parliament, was that it was not to prohibit the payment of dividends from the interest of capital or pending construction, but to prevent the payment of dividends out of the capital stock after the works were completed and when no profits had been obtained.<sup>74</sup>

In 1847 after the panic which followed the great railway extension of 1845, a standing order was passed by the House of Lords which remained in force for many years, providing that in every railway bill a clause should be inserted prohibiting the payment of interest out of capital.<sup>75</sup>

The Companies Act, 1862,<sup>76</sup> also provided in the first schedule that no dividend should be paid except out of profits earned. But this latter regulation was not compulsory on the companies registered under that act, for they were empowered by section 14 to make rules of association excluding the regulations in the first schedule, and were thus practically enabled to make what regulations seemed best to the shareholders. Consequently a curious anomaly arose out of the conflict between the standing order and the Companies Act, 1862.<sup>77</sup>

In the Railway Construction Facilities Act, 1864,<sup>78</sup> provisions were again made prohibiting the application of capital for the purpose of paying interest or dividend on account of calls made. In 1867 a clause was inserted in the Railway Companies Act of that year<sup>79</sup> which prescribed in detail the conditions under which a railway might declare any dividend. It said that no dividend should be declared by a company until the auditors had certified that the current half yearly accounts contained a full and true statement of the financial condition of the company, and that all proper expenses had been deducted from revenue.

But the act further provided that “if the directors differ from the judgment of the auditors with respect to the payment of any

<sup>74</sup> Hansard, 78: 48.

<sup>75</sup> *Railway Times*, March 16, 1889.

<sup>76</sup> 25 & 26 V. c. 89.

<sup>77</sup> *Report of select committee*, 1882, p. iii.

<sup>78</sup> 27 & 28 V. c. 121, sub-sec. (3) of s. 29.

<sup>79</sup> 30 & 31, V. c. 129, s. 30.

such expenses out of the revenue of the half year, such difference shall, if the directors desire it, be stated in the report to the shareholders, and the company in general meeting may decide thereon, subject to all the provisions of the law then existing, and such decision shall, for the purpose of the dividend, be final and binding.” Taking advantage of this last proviso, many railway companies, like the Brighton,<sup>80</sup> charged large sums to their capital account, in opposition to the opinion of the accountants and auditors that the same should have been charged to revenue. After violating the law in this manner, they would then legalize their illegal act by calling a general meeting of the company and abide by the decision of the meeting which according to the law should be “final and binding.”<sup>81</sup>

One of the chief reasons which led to the evasion of the law was that, as a member of Parliament remarked in 1867, “There is nowhere to be found a clear definition of working expenses, that is to say there is nothing to define the charges which ought to go to make up the working expenses of a company, before you arrive at the profit upon which the debenture interest forms the first charge.”<sup>82</sup> The government itself was said to be unable to distinguish working expenses from capital charges. When once it was asked to define and determine what constituted the profits of a railway, the Board of Trade appointed a committee to consider the matter. This departmental committee reported, however, that “it was too complex and difficult a matter for them to undertake, and they recommended that the question be referred to a small body of experts specially appointed for the purpose. The Board of Trade was consequently asked to appoint such a committee, but it declined to do it.”<sup>83</sup>

Under such circumstances, it became an easy matter for railways to disregard all principles of accounting, if they saw fit. The gross income representing the returns from which the working expenses must be deducted before any money should be used for dividends, was a definite quantity and could not be meddled with; but the working expenses were not, and might be “switched.” So some of the railway directors, in order to make

<sup>80</sup> *London Times*, November 18, 1867, p. 8.

<sup>81</sup> See Fraser, *British Railways*, 1903, p. 117.

<sup>82</sup> Hansard, 186: 1030.

<sup>83</sup> Fraser, *British Railways*, 1903, pp. 52-53.

their business appear "rosy," often charged part of such working expenses to capital and declared dividends out of capital.<sup>84</sup>

Moreover, the matter of charging certain items of current expenses, such as the purchase of engines, etc., to capital was viewed with more or less approval by the shareholders. In some cases it was not considered at all improper or injurious, still less dishonest, to defray a portion of the current expenditure out of money borrowed, and treat as net income or profit what then appeared as the remainder. These shareholders even would often exact dividends whether earned or not, and would connive at the means so long as the immediate end was secured. A decent dividend not only enriched their pockets, but kept up the market value of their shares. Five per cent in hand, with their holdings at par, even temporarily, appeared far more comfortable than three per cent with the stock at a discount, in spite of promising hopes. Therefore, accounts were "cooked" on the one hand and "swallowed" on the other.<sup>85</sup>

In 1882 an open effort was made to remove the restrictions prohibiting the payment of dividend out of capital.<sup>86</sup> A committee was appointed by Parliament to consider the matter. This committee, after six sessions and a month's work, reported<sup>87</sup> that the prohibition of the payment of interest out of capital was in accordance with "sound financial principles and acts as a protection to the public." In special cases, however, the committee recommended that it might be permissible, subject to strict rules,<sup>88</sup> to pay interest upon capital during construction.

<sup>84</sup> *London Times*, October 29, 1867, p. 6.

<sup>85</sup> *London Times*, November 18, 1867, p. 8.

<sup>86</sup> *Railway Times*, March 16, 1889, p. 374.

<sup>87</sup> See Report of Select Committee, 1882, *Parliamentary Paper*, 1882, vol. 13, p. iii.

<sup>88</sup> The rules recommended were briefly:

(1) Clauses defining the amount of interest, and the terms for which it is payable, to be inserted in every bill, and to be specially reported on by the Board of Trade before being submitted to the committee (on Railway Bills).

(2) Such interest to be an addition to the authorized capital of the undertaking.

(3) Power of issuing debentures to be reckoned on the capital exclusive of such addition for interest.

(4) Payment of such interest to continue only during construction of

Although the effort of the railway companies was unsuccessful, it brought about much agitation, as a result of which the House of Lords in 1886 modified its standing order so as to give power to railway companies, under certain strict provisions, to pay interest out of capital.<sup>89</sup>

The relaxation of the earlier regulations, however, was not accompanied with such good results as was expected.<sup>90</sup> On the contrary, much evil was done. The effect of paying interest out of capital, as observed a writer,<sup>91</sup> has been to give a certain particular stock an altogether fictitious value, and genuine investors have been victimized. The same writer also alleged, not without reason, that the dividing up of principal money as profits and the lack of restraint as to their enormous expansion of capital expenditure, regardless of its productivity of revenue, can, and did, only eventuate in a diminution, or even entire cessation, of dividends on ordinary stocks.<sup>92</sup>

The result of charging working expenses to capital has proved to be equally objectionable. It necessitated the overburdening of the business with large capital charges, which sooner or later would give much embarrassment to the property.<sup>93</sup> In so far as the public was not clearly aware of these manipulations, the practice proved exceedingly illusory. It was merely a matter of white-washing the true state of affairs by throwing expenses on the revenue of the future. Indeed, the besetting evil of railway finance, as observed the *London Times*,<sup>94</sup> "has arisen from the the works, or for such less period as the committee may think fit to authorize, according to the circumstances of the case.

(5) The rate of interest to be fixed by the committee, but in no case to exceed 5 per cent.

(6) The prospectus and share certificates to contain on the face of them an intimation that interest is payable out of capital during construction only.

The committee also recommended that these provisions should be enacted in a general act, instead of mere modifications of the standing orders. See Report of Select Committee, May 19, 1882, *Parliamentary Paper*, 1882, vol. 13.

<sup>89</sup> *Railway Times*, March 16, 1889, p. 373.

<sup>90</sup> *Ibid.*

<sup>91</sup> Fraser, *British Railways*, 1903, pp. 108-109.

<sup>92</sup> *Ibid.*, p. 144.

<sup>93</sup> *London Times*, November 18, 1867, p. 8.

<sup>94</sup> *Ibid.*, October 29, 1867, p. 6.



confusion of two things — capital and revenue.” Some of the most serious disputes, which affected in a remarkable degree the property of some important companies, turned entirely upon the mystification over the charging of these two items. Directors were charged with carrying to capital, expenses which belonged to revenue; and proprietors demanded that capital accounts should be closed. The general effect was that fictitious dividends made it almost impossible to estimate the value of any railway property.

From the foregoing pages, it is clear that most of the regulations governing the share capital of railway companies were adopted prior to 1845. It is only in a very few instances where any changes have been made after the passage of the Companies Clauses Consolidation Act of 1845. But these changes, although few in number, have proven of great importance as well as of a unique nature. Indeed, it is largely in the adoption of her regulations since 1845 concerning such matters as the creation of preferred and deferred stocks and the application of capital that England especially differed from other countries.

A special feature revealed is the fact that practically all the measures concerning the share capital of railway companies, as we have seen, were adopted as a matter of course. With the exception of those concerning stock splitting and the application of capital practically all the rules governing railway share capital were adopted without any debate in Parliament. Nor did they receive much discussion from the public. This, however, is not the case concerning the regulation of the other branches of railway finance as we shall see in the following chapters.



## CHAPTER III

### SUPERVISION OF RAILWAY CAPITALIZATION

#### B — LOAN CAPITAL

In the earlier years of the English railways, loan capital consisted of mortgages or bonds, which were commonly called debentures, and which resembled the bonds issued in the United States. In later years a class of securities called debenture-stock came into vogue. The debenture-stocks were similar to the debentures in that each of them represented a debt with a fixed rate of interest against the company. They were, however, distinctly different in two respects. First, the debentures were usually issued for limited periods, while the debenture-stocks were usually perpetual; and second, the former were represented by deeds issued by the company to cover large lump sums of money, whereas the latter were issued in the form of circulating certificates, in coupon form, to represent smaller amounts. Debenture stocks, however, were little known until the fifties. Accordingly, Parliamentary regulations applied at first to the temporary debentures or mortgages, but were gradually modified to take care of the permanent debenture-stock.

The cardinal policy of Parliament, as a member of Parliament said,<sup>1</sup> to which opinion he subscribed, has been to make the debenture capital of railways a secure investment. With this goal in view, Parliament has endeavored to regulate the loan capital of railways from the beginning of the enterprise. In each of the special acts, which created the company or enabled it to prosecute its work, the amount of the loan capital as well as the manner in which the company might raise it were invariably set forth in detail. Aside from some occasional and slight irregularities, the proportion of the loan capital was usually limited to one-third of the share capital of each company.<sup>2</sup> This was done

<sup>1</sup> Hansard, vol. 183, p. 785.

<sup>2</sup> Cf. *infra*, Chap. IV.

to give security to the debentures or mortgages. Before a company could raise any additional capital by loans or in any way alter the provisions of its incorporation act it was required to appear before Parliament for a special act granting such power. Thus from the beginning railway companies were subjected to explicit regulations set forth in their special acts in raising money by loans. The following passage from the London and Croydon Railway Act of 1837<sup>3</sup> may serve to illustrate how and under what conditions railway companies were permitted to raise money by loans:

And be it further enacted, that it shall be lawful for the said company, by an order of any general or special general meeting of the said company, after one-half of the said capital shall have been paid up, from time to time to borrow and take up at interest any sum in addition to their said capital of one million eight hundred thousand pounds, not exceeding in the whole the sum of six hundred thousand pounds, on the credit of the said undertaking, as to them shall seem proper; and the said company and directors . . . after an order shall have been made for that purpose at any general or special general meeting . . . hereby empowered to mortgage, assign, and charge the property of the said undertaking, and the rates, tolls, and other sums arising or to arise by virtue of this Act, or any part thereof, . . . as a security for any such money to be borrowed as aforesaid, with interest; . . . and a copy of the order of any general or special general meeting . . . authorizing the borrowing of any such sum of money, certified by one director or by the secretary or clerk of the said company to be a true copy, shall be sufficient evidence of the making of the order; . . . and all which mortgages, assignments, and charges shall be made under the common seal of the said company by deed duly stamped, in which the consideration for the same shall be truly stated. . .

The forms to be used for such mortgages as well as for the transfer of the same were prescribed. Provisions for the registration of the execution and the transfer of such securities were also set forth in detail.<sup>4</sup>

For the security of the creditors, section CLXI of the same act provided that in case of non-payment of interest as specified in the act, by an order of two justices of the peace, "some person may be appointed to receive the whole or such part of the said rates, tolls, or sums as are liable to pay such interest so due and unpaid. . ."

The time for repayment of the principal was required to be

<sup>3</sup> 1 V. c. CXIX, see. CLX.

<sup>4</sup> Cf. *infra*, Chap. V.

clearly specified in the mortgage deed,<sup>5</sup> and if no time was specified, the holders of such mortgages might demand payment after twelve months from the date when the loan was made, "upon giving six calendar months' notice in writing to the secretary or clerk of the company. . ."<sup>6</sup> If the company failed to meet such demand of repayment of the principal due and if such principal in the aggregate amounted to the sum of £20,000, two justices might order the appointment of receivers<sup>7</sup> as in the case of non-payment of interest.

From these provisions, it is clear that besides the limitations upon the borrowing powers of railway companies, two distinct principles were laid down, (1) the real security of the mortgages was limited to the "undertaking,"<sup>8</sup> the tolls and rates of the company, and (2) these mortgages were for limited periods, and were liquidated or renewed upon the expiration of such periods. Both of these principles, as will be shown more fully, gave rise to much difficulty afterwards, the one on account of its own defect which was not foreseen at the time and the other because of the wrong conception of it by the public.

These special provisions regarding loan capital soon became too numerous and hence difficult for the railways to follow. Under such circumstances, it was but natural that many irregularities took place in making loans, notwithstanding the intention of Parliament to prevent them. To simplify matters, Parliament devoted no less than twenty sections of its first Companies Clauses Act<sup>9</sup> to regulations governing loan capital of railways. In this general act, the miscellaneous provisions scattered in the numerous special acts governing the limit of borrowings, the registration of mortgages and transfers, the appointment of receivers, etc., were amplified and set forth in a compact form. The forms of mortgages and transfers contained in the special acts were also improved upon by making the provisions more specific and more adaptable to the new conditions. The powers of re-borrowing and of conversion of loans into share capital were also amplified. But the most notable change was that re-

<sup>5</sup> Sec. CLXIII.

<sup>6</sup> Sec. CLXIV.

<sup>7</sup> Sec. CLXV.

<sup>8</sup> By undertaking was meant the business of the Company.

<sup>9</sup> Companies Clauses Act, 1845, 8 V. c. 16.

garding the evidence of authority for borrowing. Formerly, as seen in the Croydon Act, nothing was required to show that the company had complied with the requirements set forth in its private acts as to the requisite subscription and payment of one-half of its capital, etc., before borrowing. The only evidence necessary was a copy of an order of a general meeting certified by a director, or the secretary, or even the clerk of the company. By the general act of 1845, however, a new provision<sup>10</sup> was made to the effect that in addition to such a certified copy of an order of a general meeting, a certificate of a justice of the peace showing that the definite portion of the company's capital, stipulated in its special act, had been subscribed and paid up, should be presented before a company made any loans. Thus the financial affairs were placed, to a certain extent, under the supervision of a public officer.

In examining these clauses of the act one cannot help being impressed with the great care which Parliament took in order to make the loan capital of railways a safe investment. Indeed, if these provisions had been conscientiously followed they might have proved effectual to carry out the intentions of Parliament and to prevent much difficulty which occurred later.

It must be remembered that the aforesaid general act was passed during a period of railway speculation. This and its subsequent collapse, which took place two years later, furnished a good test of the usefulness of the provisions concerning finance just referred to. Up to 1848 about £175,000,000 had been invested in railways, of which about £40,000,000, or one-fourth, was raised by loans. On account of the collapse of 1847, exorbitant rates of interest had to be offered; and notwithstanding such inducements, some of the best lines could not be completed for want of funds.<sup>11</sup> During the collapse, railway credit was greatly damaged. Whatever loans were made, were only for short periods. In order to clear off the wreckage of 1847, Parliament in 1850 passed the Abandonment of Railways Act<sup>12</sup> "to facilitate the abandonment of railways and the dissolution of railway companies. . . ." This act provided that the com-

<sup>10</sup> Companies Clauses Act, 1845 (8 V. c. 16), sec. 40.

<sup>11</sup> G. L. Webb, *Letter to H. Labouchere, Board of Trade, on Railways*, 1849, p. 26.

<sup>12</sup> 13 & 14 V. c. 83.



panies' share as well as loan capital should be reduced proportionately with the amount of the work abandoned.<sup>13</sup> Aside from this incidental provision contained in the Abandonment Act of 1850, nothing was done to alter the rules laid down in the Companies Clauses Act of 1845 during the period. Even the derangements caused by the crisis of 1847 failed to induce Parliament to adopt any new or to modify its old measures. But beginning about 1850 complaints against the existing system of loans began to be made by numbers of investors. As the debentures issued under the existing system were by deed for large lump sums, people with money to invest were debarred from placing it in such debentures because they could seldom find such as would suit them in amount and length of time to run. Some companies also expressed dissatisfaction with the inconvenience and expense attending the existing system of arranging their debenture debts.<sup>14</sup> It was felt that the securities for money lent to railway companies should be issued for more convenient amounts and that they should also be made easier of transference. Therefore, it was urged that divisible debenture stocks be issued and the existing system of stamps and registration remodeled. But it was at once recognized that it would be difficult to get rid of the stamps, since the government would not forego its revenue from this source. To meet this difficulty, a proposal was made that the government should not be stripped of its tax, but only it should receive it in a different way. In lieu of the existing system of stamps, each company should pay a fixed annual sum to the government, calculated on an average of, say the preceding three or four years, or in some other way satisfactory to both parties. Then the debenture stock certificates might be issued without stamps and passed from hand to hand without registration. In support of this system, besides other arguments, the success accompanying a corresponding change in the East India Company's bonds, made under similar conditions, was cited.<sup>15</sup>

To do away with registration would apparently save some

<sup>13</sup> Sec. 28, 13 & 14 V. c. 83.

<sup>14</sup> *Railway Times*, Dec. 31, 1853, p. 1354.

<sup>15</sup> The bonds of the East India Company were once stamped, but in 1825 the company obtained powers under the Act 5 & 6 Wm. c. 64 to pay an annual sum in lieu of stamp duty. Cf. *Railway Times*, Sept. 25, 1852.



trouble: but it was apprehended that such a course might create confusion and also impair the security of the debenture-holders. To avoid such danger, it was proposed: (1) Any company wishing to avail itself of the power of the act should be required to show that, on the average of the preceding three years, its net annual profit had been equal to 10% on its debt; (2) the amount of the debt should in no case be increased after the application to Parliament for adoption of the act; (3) that such company should be bound, under penalty, to publish quarterly in the *London Gazette*, a statement showing the amount of its debt, the sum required for payment of the quarter's interest on the same and the actual amount of net profit earned during the same quarter. It was thought that, with these particulars before them, the public could at once detect any irregularities in a company's loan capital, and that in the absence of any irregularities, a profit equal to 10% of its loan capital would constitute a sufficient security to the company's debenture holders.

The division of debentures into convenient units representing £100 to £1,000 was enthusiastically expected to have an important and beneficial effect. Instead of a person who wished to sell say £5,000 railway debentures having to wait until he could find another person having that exact sum to invest, he would be able to divide the amount among a number of purchasers. By this process, transactions would be greatly facilitated and the market extended. Moreover, when the debt was spread over a great number of persons, it would not be so easy for a combination of large money-lenders to demand repayment of loans at inconvenient times so as to embarrass the company for their own benefit. Thus a great difficulty with which the companies had to contend would disappear.<sup>16</sup>

Following these agitations further efforts were made during the years from 1851 to 1853 to effect an alteration of the existing debentures by the issue of stocks carrying a fixed rate of interest and affording other owners the same privileges as the debentures, in lieu of the existing bonds.<sup>17</sup> Parliament, however, failed to see the necessity of passing any act to accomplish the changes; but self-interest induced a number of companies to convert their debentures into such perpetual debenture

<sup>16</sup> *Railway Times*, Sept. 25, 1852, pp. 100-109.

<sup>17</sup> *Railway Times*, Dec. 31, 1853, p. 1354.

stocks. The innovation was looked at askance. The idea was still rife that loans were only a temporary charge which ought to be gotten rid of as soon as possible. Anything which had to do with perpetuating such loans at once aroused suspicion. In commenting upon such practices, the *Railway Times*<sup>18</sup> said that such operations were "suggestive of grave reflection." It lamented that railway companies should change their debts into a permanent part of their capitalization, and regarded such a change as an unmistakable evil. It urged that those companies which had borrowed to a large extent "would do well to make up their minds to pay off debentures . . . before they partake of any dividends, no matter how moderate or legitimately earned." "Every proprietor who is capable of serious thought, and who desires to leave an unincumbered estate to his children should make it his duty to strive for an extinction of the loan debt of every company with which he is connected. . . ." It was the general idea that when a company was out of debt it was out of danger. But it soon became clear that the debts of railways, once contracted, were going to remain. The companies clearly realized the usefulness of these debenture stocks. This class of securities would enable persons who had no speculative desires, who had no enterprising tastes, who had no practical knowledge, to aid in the successful completion of splendid undertakings; they would enable such persons to obtain the single object which they desired — a fixed secure income.<sup>19</sup> But what was of far greater importance was the fact that debenture stocks would save the companies from being swamped by debentures falling due at unfortunate times. This great advantage, however, was not clearly recognized until some years afterwards. It was the need of money which gradually led a number of railway companies to use debenture stocks.

Beginning with the fifties, it became quite general for railway companies to apply to Parliament for powers to create this class of stock for the purpose of paying off mortgages and bonded debts, or as a means of raising money in lieu of borrowing on mortgages or bonds.<sup>20</sup> Therefore, it became important that the legal powers under which the old debentures should be ex-

<sup>18</sup> *Ibid.*, May 8, 1852, p. 473.

<sup>19</sup> *Economist*, May 2, 1863, p. 477.

<sup>20</sup> Board of Trade, *General Report on Shares, Loans, etc.*, 1860, p. 17.

tinguished and the debenture stocks created, should be clearly defined. No general legislation took place. What Parliament did was to insert clauses in the bills of the companies seeking powers to make such conversions of new issues. In these special acts, Parliament prescribed in detail the manner in which such conversions of debentures or the creation of new debenture stocks might be effected. The following passage from the Act of 1851 of the London and Northwestern Railway <sup>21</sup> which was one of the most important companies using this class of securities, may serve to show in what way Parliament legislated on the issue of such stocks:

That it shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the company convened with due notice of that object, to resolve that any portion of the borrowed capital of the company, or any debenture or other security for which or for the interest whereof the company are lawfully liable, . . . not exceeding an amount to be defined in and by such resolution, may be converted into stock of the company of like amount, either by agreement with the holders of such mortgages or bonds respectively before the same respectively became due, and issuing stock of a corresponding amount, instead of reborrowing the same so paid off; and also, with the like consent, from time to time, to resolve that the whole or any part, to be defined in and by such resolution, of the moneys which the company shall have authority to raise by borrowing under the powers of any of their Acts, . . . shall or may be raised by the creation and issue of stock of a corresponding amount, instead of borrowing the same; and also, with the like consent, to attach to the stock so authorized to be created and issued for any of the purposes aforesaid a fixed and perpetual irredeemable yearly dividend or interest at any rate not exceeding the rate of £3 10s. for every £100 thereof; . . . and the stock so created and issued shall be a charge upon the tolls and undertaking, and lands, tenements, and hereditaments of the company, but shall be distributable, transmissible, and transferable, . . . and the said interest or dividend shall forever have priority of payment over all other dividends on any other stock or shares of the company, whether ordinary or preference, or guaranteed, and the stock when so created shall be termed "*London and North Western Debenture stock*;" provided that nothing herein contained shall in anywise prejudice or affect the rights of the holders of mortgages or bonds of the company. . . .

Four distinct principles were set forth in this clause: (1) Debenture stocks might be issued in redeeming debentures fall-

<sup>21</sup> 15 V. c. cv. Quoted by John Whitehead in his book on *Guaranteed Securities*, 1859, pp. x-xi.



ing due as well as for raising additional loan capital within the company's powers; (2) the rate of interest was fixed with the consent of Parliament; (3) the security of such stock should consist in a charge upon "the tolls and undertaking, and lands, tenements, and hereditaments" of the company; and (4) such stocks were to be "distributable, transmissible, and transferable as personal estate." It must be remembered that some of these principles were not new, but were copied from those governing the issue of the older forms of securities. On close perusal, it may be seen that the provisions contained in the clause were such as to make the debenture stocks a safe and clearly-defined investment. Indeed, Parliament had by this time recognized to a certain extent the necessity of this class of securities for the improvement of the financial condition of the railways, and commenced to take steps to give the holders of debenture stocks every possible protection and security. Thus in the act just referred to provisions were made to the effect that if written demand for the payment of dividend due on any debenture stocks was not met satisfactorily within thirty days, the proprietors of such stocks holding an amount of nominal value of £20,000 or upwards might, without prejudice to their right to sue, require the appointment of a receiver.<sup>22</sup>

By these provisions, the debenture stockholders were given the power to recover the arrears of their interest either by bringing suit in any competent court or by requiring the appointment of receivers. It may be noticed, however, that only the interest was secured, and the principal was not mentioned. There was some dissatisfaction over this fact, but it was generally conceded <sup>23</sup> that so long as the interest was made sure, the principal would take care of itself, for what the average investor wanted was not so much the possession of his principal but a regular and reliable income that grew out of the principal. This was especially true when his security was easily marketable.

The chief reason why Parliament took such precautions to give great security to the holders of debenture stocks was that there was an abundance of money ready for investment and the only thing necessary to induce investors to come forward

<sup>22</sup> 15 V. c. cv. XII.

<sup>23</sup> *Economist*, Feb. 23, 1867.

was indisputable security.<sup>24</sup> With this point in view, Lord Redesdale in 1856, endeavored to insert a clause in the railway bills of that session, making the railway directors personally liable for any illegal issue of debenture stocks; but this proposition, which if adopted might have prevented much trouble, was "killed" in the committee room.<sup>25</sup>

But it must also be noticed that what Parliament did was for the protection of the holders of legal securities. If one's security was legal, he was safe, but no protection was extended to the holders of illegal securities. Parliament prescribed the rules governing the issue of railway securities, and laid down the principle that securities issued in violation of these rules were illegal and hence not within the protection of law. *Per se* this doctrine appeared proper and good. But how were the investors to know which securities were legal and which were not? Parliament gave adequate protection to the holder of legal securities, but it failed to enable the investors to distinguish the legal from the illegal. Hence in spite of the repeated and apparently earnest efforts of Parliament much dissatisfaction existed. Complaint was heard everywhere as to the difficulty of distinguishing the legal from the illegal security.<sup>26</sup>

To determine the legality of a security required an understanding of a number of acts of Parliament which the ordinary investors could hardly construe correctly without a lawyer's aid. Yet if these acts were not justly construed and precisely obeyed the debenture would give no effectual charge upon the line, and hence the holder of it would have no legal claim to priority over even a contracted debtor of the company. Furthermore, the nature of the law was such that a debenture which was once bad would remain bad. A debenture which was invalid at its issue because it was in excess of the borrowing powers, would not be improved because other debentures were paid off. The contract was illegal when it was executed, and it could not gather legality by subsequent payments to third parties.<sup>27</sup>

<sup>24</sup> *Railway Times*, Aug. 4, 1855, p. 781.

<sup>25</sup> *Ibid.*, April 26, 1856, p. 514.

<sup>26</sup> It was often heard in bank parlors, "How do we know this debenture is worth anything? The validity depends on its accordance with the borrowing powers of the company, and what those powers are, or how they have been exercised, we do not know." Compare *Economist*, July 11, 1863.

<sup>27</sup> *Economist*, May 2, 1863.



In spite of this unsatisfactory state of affairs, the use of debenture stocks continued to become more extensive. To insure uniformity in practice and to facilitate the use of such stocks, the Board of Trade repeatedly recommended,<sup>28</sup> during the latter part of the fifties, that provisions should be made in a general act embodying the principles governing the issue of such stocks. Consequently Parliament in 1863 codified into general law the various provisions scattered in the special acts as well as some of the recommendations of the Board of Trade. A large part of the Companies Clauses Act of that year<sup>29</sup> was devoted to the regulation of debenture stocks. Provisions were made as to the creation and issue of debenture stocks, the priority of such securities, the limit of the rate of interest and the enforcement of payment of such interest either by action or by the appointment of receivers. The companies were also required to keep a register of debenture stocks issued and to deliver certificates to holders of debenture stocks, etc. In short practically all the provisions contained in this act governing the creation and issue of debenture stock were modelled after those governing the creation and issue of the earlier forms of securities, and which had been heretofore inserted in special acts.

The improvement, however, was not enough to meet the situation. The act provided, in great detail, for the regulation of the debenture stock itself, but it did not afford any effective means for the enforcement of the regulations. It gave further protection to the holders of legal debentures; but it again failed to evolve any means by which one might be enabled to tell which debenture was a legal one and which was not. In brief, it stopped short at the point where action was demanded. Hence, in spite of the act, little improvement was made to clarify the doubt which prevailed. In the meantime gross encroachments upon the acts of Parliament were made.

Being at a loss as to how to mend the situation, Parliament appointed a select committee in 1863 to inquire as to what should be done to prevent such encroachments;<sup>30</sup> and the work of this committee was continued by another select committee appointed in the following year. Both of these committees

<sup>28</sup> Board of Trade, *General Report on Railway Bills*, 1861, p. 23.

<sup>29</sup> 26 & 27 V. c. 118, Part III.

<sup>30</sup> Cf. *infra*, Chap. IV.

were of the opinion that holders of statutory debentures duly registered, should have a right to recover and secure the payment of all principal and interest due to them in priority to the holders of other obligations not issued under the authority of Parliament.<sup>31</sup> They also recommended that the right of the public to the use of the railways should be protected and that the rolling stock and plant of a railway should never be seized by creditors. Moreover, the committee recognized the evil resulting from the lack of means to establish the legality of debentures. Therefore it was also urged<sup>32</sup> as a modified protection to the holders of such debentures that there should be a semi-annual declaration in the gazette of the state of the borrowing powers of the company and an endorsement upon each certificate. This was not expected to render it impossible for the companies to issue debentures beyond their borrowing powers; but it was hoped that the knowledge of the fact that their misconduct would be palpably and continually kept before their own eyes, would be a powerful force in restraining the directors from exceeding such borrowing powers to any considerable extent. Many plans<sup>33</sup> for verifying the legality of debentures were proposed, of which one advocated that there should be an examination of the debenture accounts by a public department, and that a stamp should be affixed to the debenture whose legality had been ascertained. It was also urged that the chairman and secretary of the railway company should be required to certify under their hands the amount of debentures at any time issued, and should be made liable to penalty if the amount was false, or if the debentures issued were in excess of their borrowing powers. The great weakness with a scheme like that was that it did not provide for the most common case in which debentures were issued by mistake. As the directors were liable in almost all cases under such a scheme except that of mistake, it was readily recognized that such a scheme would not prove very effective.

It was also proposed that all debentures illegally issued should be made binding on the company and have a claim prior to the dividends of the shareholders. This was based on the usual as-

<sup>31</sup> Select Committee of 1864, *Report*, pp. III-IV.

<sup>32</sup> Evidence before select committee of 1864, p. 27.

<sup>33</sup> *Economist*, July 11, 1863.

sumption that the shareholders appointed the directors who managed the business and should, therefore, be liable for their misconduct. But it was recognized that "considering how little real influence most shareholders, in fact, have in the appointment of the directors, it appeared rather hard to reduce their dividends if the directors are dishonest. . . ." <sup>34</sup>

Parliament, however, was not ready to adopt any of these propositions. So the situation drifted from bad to worse. The goodness of debentures and the repayment of the money borrowed, as in the case of the Great Eastern,<sup>35</sup> became the subject of a complicated controversy even between the directors and the deputy chairman of the company. The one would say that bad securities had been issued, while the other would deny the charge; and the world had to judge between them. In some cases debentures were issued when no real capital whatever had been subscribed. As in the case of the Eastern Section Railway,<sup>36</sup> certain "receipts" were exchanged between a financial agent and the company by which transaction "apparent capital" was created. Thus the parliamentary requirements and restrictions were utterly disregarded. But this case was not the worst. Some men who were known to have "the greatest repute for integrity and the highest standing," went so far as to "pawn" debentures not only in an illegal manner, but even for fraudulent purposes. As revealed in the case of the London, Chatham and Dover Railway,<sup>37</sup> supposedly genuine debentures issued by the company were found later to have "nothing in them." In defence of the company, one of its directors declared that those "debentures were not debentures at all." He admitted that he had obtained money on them, but he said "They were not worth anything." They were "quasi things" and the good securities were elsewhere. It was no wonder, therefore, that the whole basis of railway credit was utterly shaken.

To make things still worse, the treacherous instrument called Lloyd's bonds<sup>38</sup> also appeared in the financial market about

<sup>34</sup> *Economist*, July 11, 1863.

<sup>35</sup> *Economist*, Aug. 12, 1865, p. 970.

<sup>36</sup> *Economist*, Oct. 27, 1866.

<sup>37</sup> *Economist*, Oct. 27, 1866.

<sup>38</sup> For a description of these bonds *cf. supra*, p. 19.



this period. What followed was but natural. Distrust and dissatisfaction over railway securities was felt everywhere. It was urged that the government should see to it that the law was complied with. A loud cry<sup>39</sup> was also raised demanding that government should stamp all the debentures issued as it stamped money and "ascertained the qualities of schoolmasters,"<sup>40</sup> so that only the allowed number would be permitted to circulate.

Nothing, however, was done by Parliament to meet the demands. In the meanwhile the railway panic of 1865-1867, which was the result as well as the cause of the growing distrust in railway debentures, was setting in, during which a number of companies suffered great embarrassments. The credit of some railway companies like that of the South Eastern was greatly injured on account of the pressure brought about by the renewal of their debentures. Other companies, like the London, Chatham and Dover, met with "utter and disgraceful failure"<sup>41</sup> due to similar causes. What was even of greater consequence was the effect of such happenings upon the credit of the whole railway system. The accidental circumstances of mere neighborhood to the "exploded" companies was construed into some participation in their faults. In the midst of this chaos, a royal commission was appointed to examine the whole matter, with a view toward government purchase as a solution of the problem. Parliament intended to postpone all action until the commission had finished its work; but the prevailing difficulties made early action necessary. Therefore, in 1866 the Railway Companies Securities Act<sup>42</sup> was passed for the purpose of remedying the situation.

By 1867 the panic subsided; but the old ominous controversy over the nature and value of railway securities was still rife. In fact it held all other financial matters in abeyance. Of the aggregate railway capital of about £450,000,000 more than 27% represented debenture debts,<sup>43</sup> the number of investors in such securities numbered no less than 100,000.<sup>44</sup>

<sup>39</sup> *Economist*, Nov. 17, 1866.

<sup>40</sup> *Ibid.*, Oct. 27, 1866.

<sup>41</sup> *Ibid.*, 1866, pp. 1484-1485.

<sup>42</sup> 29 & 30, V. c. 108. *Cf. infra*, Chap. V.

<sup>43</sup> *London Times*, Feb. 6, 1867, p. 9.

<sup>44</sup> *Hansard*, 185: 297.

Meanwhile the current belief was that a man lending money upon a debenture, lent it upon a mortgage not only of the income, but also of the property of a railway company. But this belief was shattered by the decision of the Lord Justice in the London, Chatham and Dover Company's land case,<sup>45</sup> in which the principle governing the question was laid down at some length. It was held that the holders of railway debentures were not only without any immediate hold on the general property of the undertaking as distinguished from its income, but were not entitled to any claim to the rents or proceeds from the sale of the company's surplus land. In other words, the debenture-holders had only a hold on the tolls and earnings of the line and not on the property of the company. The whole question seemed to have turned on the interpretation given to the word "undertaking" in the security which the debenture-holders received for their money. The popular idea was that by that term the debenture-holders were mortgagees of the whole property and effects of the company. But the court held that the object and intentions of the legislature were to create a railway "which was to be made and maintained, by which tolls and profits were to be earned, and which was to be worked and managed by a certain company. . . ." "The whole of this when in operation is the word contemplated by the Legislature, and it is to this that the name undertaking is given."

This decision and the financial depression of 1865-1867 brought to light the following broad and practical points regarding railway debentures.<sup>46</sup>

First. The Court of Chancery would not undertake to manage a railway for the debenture holders. It was true that in

<sup>45</sup> During those years many companies acquired, either accidentally or involuntarily, more land than they ultimately needed, and such lands sooner or later were resold, so that the proceeds might revert to the capital of the concern. The London, Chatham and Dover more than other companies, had a considerable amount of such lands which was valued at about £1,000,000. The debenture-holders, naturally enough, desired to establish their claims upon this as well as other properties of the company, and applied to the Court of Chancery for a receiver to take and hold for their benefit the proceeds from the disposal of such lands when sold and the rents in the meantime. It was on this claim that the decision referred to in the text was rendered. Cf. *London Times*, February 6, 1867, p. 9.

<sup>46</sup> *Economist*, Feb. 2, 1867.



some cases the Court of Chancery did, for limited periods, undertake the management of large concerns; but this was done with the view of winding up that concern. But it could not wind up a railway. A railway was, as had been recognized then, an unending business and the court could not wind it up.

Second. The debenture-holders could hardly manage the railway in case their interest and principal were in arrear, even if they wanted to do so. They were not a corporate body. They could not appoint directors to manage for them. The majority of all but one had no more legal capacity than the one.

Third. The debenture-holders had not even a preferential claim or mortgage on any outlying surplus land.

Fourth. The debenture-holders could not *sell* the railway. The right of building the railway was given by Parliament to a certain specific company. Neither that company, nor any law court could sell it save by the assent of Parliament. "Once a railway company, always a railway company." It was a sort of a consecrated entity, which only Parliament could create, and which only the same body could change.

Fifth. The mortgagees could not split their securities in spite of the Act of 1863, the old form of debentures representing lumpsums of money being still the most common form of securities issued by railway companies. Thus the investors must take the security as a whole and as a unit, and as they found it.

But the real state of affairs was not as objectional as these difficulties would suggest. All but the last of these drawbacks applied only to the poorer roads, which were in difficulty, and did not have any reference to the debentures of strong, solvent companies.

But the most objectionable drawback of the railway debentures was the falling due of such securities at fixed and often unfortunate seasons. This was fairly recognized in the early fifties, but was made clear during the depression. Experience had taught the hitherto credulous that short-period debentures were dangerous and uncontrollable, "a lottery within themselves." Some companies "highest in credit, most secure in revenue . . . unassailable in repute found themselves . . . as helpless as the vilest excrescence which had been able to foist itself into the family of railway interests. . . ." Thus the *Railway Times*

urged that short-period debentures be abolished and in place debenture-stocks issued at such a rate of interest as would establish for them an immediate and permanent popularity. The *Economist* also advocated that in the interest of the companies as well as the investors, it was essential that a large portion of the existing 110 millions sterling of debenture bonds which would mature at fixed periods, very often without any or at least with insufficient notice, should be changed into debenture stocks, representable in consols at the option of the holder, by certificate to bearer in coupon form. Some members of Parliament<sup>47</sup> also recognized the evil of the existing system of debentures. Many solvent companies were often placed in considerable embarrassment by the claims of the holders of such short-period debentures. Indeed, to permit a large amount of capital raised with short-period debentures to be sunk in a fixed undertaking was regarded as a great error on the part of Parliament.<sup>48</sup> The legislature was forced to recognize this evil, when borrowers were compelled to come constantly or "almost hourly" before it for renewals of their loans.<sup>49</sup>

Under such conviction, many people firmly believed that permanent debenture-stocks should be created in place of the existing "accommodation bills," as the railway debentures were called. It was urged<sup>50</sup> that this reform would not only save the companies the periodical recurrence of the danger inherent with the falling due of short-period debentures, but would also mean an immediate source of saving in money and trouble to the railways. It would relieve the railways from the trouble of stamping, and would save the commissions and fees to lawyers and brokers as well as the wages of the staff of clerks employed for managing the debenture business. Therefore, new debenture-stocks should be issued to shareholders in place of dividends, and this procedure, it was thought, would prove acceptable to the shareholders.

Another defect of the law which was brought to light by the financial depression, and which led to an enlightened and most

<sup>47</sup> Hansard, 185: 785.

<sup>48</sup> *Ibid.*, 186: 1030.

<sup>49</sup> *Ibid.*

<sup>50</sup> London *Times*, March 23, 1867, p. 12.

beneficial enactment, was the fact that the debenture holders had no preferential claim on the rolling stock which formed the implement of the trade. In the absence of any adequate protection for the rolling stock, even if the debenture-holders did unanimously concur in the management of a railway to compensate their losses in interest or principal, they would still be in danger of having the carriages seized by the contractor, the engine maker, or any other casual creditor of the company. The debenture mortgage was on the "tolls or fares" of the railway, and there was no specific pledge of the carriages.<sup>51</sup> Therefore legislation was needed to keep the railway intact in order to safeguard the security upon which the debenture-holders had a claim, namely: the earnings of the company.

As might have been expected, the panic of 1865 and the resultant discoveries regarding the validity and securities of railway debentures created a widespread alarm among the owners of these securities, which fact in turn involved many railway companies in serious embarrassment. Interest to the amount of one-half to one per cent higher than should have been paid according to the natural state of the money market had to be offered in order to induce investments.<sup>52</sup> It became essential for Parliament to take action in order to remove such alarm. Moreover, the fact that the class of people who invested in such securities were those who needed the greatest protection made immediate action necessary.<sup>53</sup> Early in 1867 the Railway Debenture Holders Bill was introduced to prevent any one class of creditors from injuring the public and other losses of creditors by seizing the rolling stock so as to stop the working of the line.<sup>54</sup> This measure, before being presented to Parliament, was submitted to and approved by "the highest authorities" of the leading railways and was also approved by the Attorney General.<sup>55</sup> What the bill asserted was that the whole undertaking, engines, carriages and all, formed the security of the debenture holder, and that other creditors should be forbidden from seizing engines or any part of the plant, or in any way

<sup>51</sup> *Economist*, February 2, 1867.

<sup>52</sup> Hansard, 185: 787.

<sup>53</sup> Hansard, 185: 781.

<sup>54</sup> The bill was introduced on Feb. 12, 1867. Hansard, 185: 297-299.

<sup>55</sup> Hansard, 185: 781.

breaking up the "living whole" on which the conveyance and convenience of the public as well as the money of the mortgagees depended.

This measure was regarded as both timely and helpful in establishing the desirability of debentures. "No one could doubt," remarked the *Economist*,<sup>56</sup> "that this enactment is beneficial. It amounts to preserving the *interest* of the mortgages from all danger, if the line yields money enough to pay it, because the whole earning machine is kept together and intact to make what gains it can."

It was also felt in Parliament that, in the existing feverish state of the public mind, any attempt to oppose such a measure as the Railway Debenture Holders Bill might conduce to the spread of panic and to create the impression that Parliament was not anxious to strengthen the position of the debenture-holders.<sup>57</sup> Nevertheless, the bill was shelved for a while after the second reading.

Being deeply impressed by the need of protection to the debenture-holders, some members evidently grew impatient with the lack of action of Parliament. Consequently early in April, 1867,<sup>58</sup> a resolution was introduced into the House of Commons to the effect that "in case where adequate security can be given, the state should assume the responsibility of the debenture-debt of railway companies unable to meet their engagements, upon conditions providing for the eventual acquisition of such railways by the state upon terms of mutual advantage." In fact the matter of government guarantee had been thought of for some time. In the previous year it was announced that the cabinet intended to adopt a plan for giving a government guarantee to railway debentures and for obtaining a sum of money applicable to the payment of the national debt by that means. The scheme was proposed in various forms, but in its essence it was this: that the government should borrow the money needful for railways at the cheapest rate it could in the market, and lend it to the railways at what was called a "just" rate, namely, a rate which railways had been paying. This process, it was

<sup>56</sup> *Economist*, February 23, 1867.

<sup>57</sup> Hansard, 185: 788.

<sup>58</sup> The resolution was introduced by R. W. Crawford on April 2, 1867. See Hansard, 186: 1025-1063.



hoped, would on the one hand enable the railways to obtain money upon fairer terms than they otherwise could, and on the other hand, enable the government to gain the difference between the rate which it would have to pay and that which it would charge.<sup>59</sup>

So far, so good. But serious objections were at once detected. In the first place it was recognized that the chief reason why the government was an easy borrower — a borrower at low terms — was because it was a small borrower. Even then, there were many dealers who declared that the public were withdrawing from investment in “consols.” If a large new loan were asked for, it would likely tax the credit of the government to such an extent as to necessitate a great depreciation. But it was argued, not without reason, that the proposed loan to pay off railway debentures would not constitute a loan for new, additional money. The capital represented in these debentures had been sunk years ago. All that was needed was a transfer from the books of the railways to that of the government. To this it was replied that such a transfer was precisely what would impair the credit of the government. Its securities were then at a scarcity value. The money to be attracted by a low rate of interest was limited and could not be much augmented. Consols were once sold for less than half of their face value,<sup>60</sup> and it was not beyond possibility that a disastrous event like a war might occur to necessitate large loans. In such case, a government guarantee would prove, it was feared, exceedingly embarrassing, if not disastrous.

Moreover, even if the borrowing could have been done properly, it was still almost impossible for the government to fix the “just” rate at which to lend to the different railways. The natural test of a proper rate of interest was the test of the market. The railways which the public trusted would get their money on good terms; those which the public distrusted would get it on bad terms. But it was asked, how could a government charge one railway 5% and another railway 4%. There would at once be a cry of favoritism. Such a process would not only give rise to much complaint, but would also offer a strong temptation to the different lines to corrupt the officials who had charge of de-

<sup>59</sup> *Economist*, November 17, 1866.

<sup>60</sup> In 1797 consols were sold at 47. Cf. *Economist*, November 17, 1866.



termining the rates of interest. Therefore it was urged that the true function of a government in relation to railway credit was to see that the law was complied with. The government should use not its faculty of borrowing, but its function of verification. Thus neither the resolution of Mr. Crawford nor the sentiment of the cabinet in favor of government guarantee, resulted in any action by Parliament.

But many members of Parliament clearly saw that something must be done to prevent the spread of discredit over railway debentures. Therefore, soon after the withdrawal of Mr. Crawford's resolution just referred to, the Railway Companies Arrangement Bill was introduced by the Secretary of State for India. This bill, after being read a second time, was, in conjunction with the Debenture Holders Bill, referred to a select committee, and the two bills were "fused" into the Railway Companies Bill.<sup>61</sup> This measure was regarded as of great importance. Lord Redesdale was even of the opinion that if it had been introduced twenty years earlier it might have prevented many of the difficulties in which the railway companies had become involved.<sup>62</sup>

When the bill was discussed in the House of Lords, a proviso was urged to the effect that whenever a company created any debenture stock having a higher rate of interest than 5%, it should fall to that rate at the end of seven years.<sup>63</sup> But the Duke of Richmond pointed out that the question of limiting the rate of interest had been thoroughly discussed by the committee which examined the bill. This committee felt that the companies which required such arrangements were in most cases — probably in all cases — the best judges of what they needed, and that they ought to be left to borrow money in the manner which they thought best. If they could borrow at 5% they were not likely to pay 6% for it. Therefore, it was thought unjustifiable for Parliament to restrict the companies in fixing the rates of interest.<sup>64</sup>

But the most important and the most warmly opposed part of the bill was that which prohibited creditors from seizing the rolling stock of railways. This modification of the established

<sup>61</sup> Hansard, 187: 1723-1724.

<sup>62</sup> *Ibid.*, 188: 491.

<sup>63</sup> *Ibid.*, 189: 157.

<sup>64</sup> Hansard, 189: 157-158.

law by adding to the legal mortgages of the land estate, as it was called, all the personal property that might happen to be upon it was looked upon as too great a change.<sup>65</sup>

It was, however, clearly recognized that it would be very inconvenient to the public, who also had a right in railways, to have the rolling stock of the company seized by individual creditors, to say nothing of the undesirability of destroying the reasonable security of the debenture-holders, who were the first creditors. When a law gave occasion for the stoppage of the nation's commerce, it should be modified even if it were of old standing.<sup>66</sup>

An objection was raised against such a proposition on the ground that it would deprive the trade creditor of his security. It would give the debenture-holders an unwarrantable advantage over all other creditors of a railway company, with the single exception of the tax gatherers. It was feared that a case might occur where a contractor engaged in constructing a line and desiring payment when the line was finished, would be unable to put in an execution for payment in case the company had issued debentures. The contractor for casual repairs, too, might be brought into such a predicament under similar circumstances. For these reasons, a member of the House of Commons seriously opposed the measure, and thought that it would be more appropriate to call such a measure railway companies creditors' finance bill instead of railway debenture-holders' bill.<sup>67</sup>

Those in favor of the measure, however, denied that such could be the case. However, even if it did so affect the security of such trade creditors, that fact alone was not sufficient to make the measure undesirable. Inasmuch as the bulk of the railway revenue was received in cash, railway companies should pay cash for their stores, labor, etc., and should not get into debt on their account. Moreover, there was in fact a large amount of property left untouched by the bill which could be seized by such trade creditors, if such a course became really necessary. In addition, the trade creditors had recourse to appointing receivers.<sup>68</sup>

<sup>65</sup> Hansard, 185: 783-784.

<sup>66</sup> *Ibid.*, 185: 784.

<sup>67</sup> *Ibid.*, 185: 783.

<sup>68</sup> *Ibid.*, 185: 782.

The opponents to the measure further contended that the clause would encourage solvent companies to delay the payment of their debts. Moreover, it was inexpedient to oblige the creditors of solvent companies to resort to the "cumbersome and perhaps tedious" plan of getting a receiver appointed. If a railway were insolvent, it would itself apply for the appointment of such receivers. In other words, in the case of solvent companies, it would be impracticable and, in the case of the insolvent, it would be unnecessary for the trade creditor to have recourse to the appointment of receivers. Hence he would get no protection whatever from the clause providing for the appointment of such receivers.<sup>69</sup>

To this it was answered that a creditor would have ample remedy inasmuch as a solvent company would, under the provisions of the bill, make immediate payments, while a receiver should be appointed in the case of insolvent companies. No company that was solvent would think for an instant of allowing a receiver to be appointed.<sup>70</sup> It was also urged that if the trade creditors had the power of selling the rolling stock, there would be a serious effect upon the shareholders. Such powers might be pressed at inconvenient moments with the intention of bringing down the shares to a point far below their value, and then the very men who had assisted in bringing about that unfortunate state of affairs might step in and make a handsome fortune out of the misfortune of others.<sup>71</sup> It was further pointed out that it was only the small creditors who would ever be tempted to seize the rolling stock. It would never be worth the while of large creditors to do so. No railway which had the slightest regard for its own reputation would permit its rolling stock to be seized for the purpose of securing small debts.<sup>72</sup> Furthermore, the measure was not directed against existing creditors. As to future creditors, they would be given their credit with the full knowledge that they could not levy execution in case of default in payments. Thus they would be duly aware of what their securities were. To give such creditors the power to apply to the Court of Chan-

<sup>69</sup> Hansard, 187: 1725.

<sup>70</sup> *Ibid.*, 187: 1726.

<sup>71</sup> *Ibid.*, 187: 162.

<sup>72</sup> Hansard, 189: 162.

cery for the appointment of a receiver to seize the tolls of the railway was regarded, therefore, as ample protection.<sup>73</sup>

The opponents also endeavored to introduce an amendment to the measure that should retain the power of seizing the rolling stock in the hands of the creditors, unless the Court of Chancery should appoint a receiver. But this amendment was defeated.<sup>74</sup>

Another new and seriously contested section of the bill was the so-called "arrangement" clause, providing for the creation of "pre-preference" stocks.<sup>75</sup> This provision was opposed on the ground that it would interfere seriously with the rights of the holders of the some £150,000,000 in debentures.<sup>76</sup> Persons who advanced money on debentures did so in the belief that they had a first claim upon the company's receipts; but if Parliament should confer the power of creating preference stocks, the public would be unwilling to advance any more money upon this class of securities in the future. It might be proper to permit the creation of such pre-preference stocks by special act when the particular circumstances warranted such a procedure; but it would be impolitic to confer such powers by a general act.<sup>77</sup>

There was also much opposition among the holders of railway debentures as shown by the fact that a formal protest was lodged against such a provision being inserted in private bills of the session by a large number of bankers and lawyers, as well as by many prominent railway men, in behalf of the holders of railway debentures.<sup>78</sup> These petitioners claimed that the effect of such

<sup>73</sup> *Ibid.*, 187: 1725.

<sup>74</sup> *Ibid.*, 187: 1722.

<sup>75</sup> Pre-preference stocks were securities issued in excess of a company's borrowing powers in case that company became unable to meet its engagements with its creditors. The first instance of the issue of such stocks was that of the Caledonian Railway. In 1851 that company obtained powers from the House of Commons to issue debentures in excess of its powers, for the purpose of paying its debts. At the time the company was in a state of great embarrassment, and the course adopted proved beneficial. It was pointed out in Parliament that in that case the creation of the additional debentures (pre-preference stock was not the name used) was equal to putting a charge over the preference shareholders. Hansard, 187: 1246. For further discussion of this provision in Parliament, cf. Hansard, vols. 186-189, under Railway Companies Bill, 1867.

<sup>76</sup> Hansard, 189: 159-160.

<sup>77</sup> *Ibid.*, 188: 590-492. and 189: 163.

<sup>78</sup> *Railway Times*, July 22, 1897.



a provision would be to depreciate or bring into disrepute the security hitherto attached to acts of Parliament. It was claimed that "a large proportion of these securities were held by trustees for infants, married women and widows, or by persons of fixed income, who invested their means in such securities upon the faith of the acts of Parliament, and that such persons would have never made any such investments had they supposed that Parliament would permit their rights to be affected by a later issue of securities of prior lien."

After being committed and recommitted and modified in many respects, the bill was passed and became the Railway Companies Act of 1867. The first important section of this act provided that the creditors of a railway company might obtain the appointment of a receiver, and if necessary, of a manager, on applying to the Court of Chancery to manage the railway, but that the "rolling stock and plant used or provided by a company for the purpose of the traffic on the railway or of the stations or workshops, shall not, after the railway or any part thereof is open for public traffic, be liable to be taken in execution at law or in equity at any time after the passing of this Act, and before the first day of September, 1868. . . ."

It may be noticed that the provision for the protection of rolling stock was adopted for only one year. This was due to the fact that such a measure was still regarded as an innovation. On account of the aforesaid opposition and uncertainty as to the practicability of such a measure, Parliament decided to try it for twelve months so as to carry the matter over the next session; and then if it were found absolutely necessary that there should be a sale of rolling stock by the creditors, it could be so arranged by an Act of Parliament.<sup>79</sup>

This precaution proved beneficial. It afforded time to try out the principle and it also gave a great stimulus to all concerned to make close observation, with a view to altering the rule either one way or the other.

The result of the application of the provisions governing the protection of rolling stock proved so advantageous that Parliament in the following year, by a special general act,<sup>80</sup> extended

<sup>79</sup> Hansard, sec. 3, 189:162.

<sup>80</sup> The Railway Companies Act, 1868, 31 & 32 V. c. 79. This act was enacted for the sole purpose of extending the time-limit to 1870.



the time limit of the provision to three years, that is, until September 1, 1870, and at the end of the three years, Parliament found it expedient to pass another special act<sup>81</sup> for the purpose of making the provision perpetual.

A large part of the act was devoted to defining relations between the company and its creditors. In this connection, ample provisions were made for settling and defining the rights of shareholders of the company as among themselves for raising money by pre-preference stocks. Considerable protection was afforded the holders of the different classes of securities which might be affected by such schemes, through the requirement before a plan could be put into operation of the consent of the holders of three-fourths of each class of such affected securities. Moreover, the scheme must first of all be filed in the Court of Chancery; and after hearing the directors, creditors, or other parties whom the court might deem entitled to be heard and on being satisfied with the nature of the scheme, the court might confirm it. Notice concerning both the filing, as well as the confirmation, of the plan must be published in the gazette.<sup>82</sup>

Besides the provision prohibiting the seizure of the rolling stock, and that for the creation of pre-preference stocks, the Railway Companies Act of 1867 contained a number of other important clauses governing the loan capital of railways. In the first place it provided that, except the claim of the rent charges and lease, "all money borrowed or to be borrowed by a company on mortgage or bond or debenture stock under the provisions of any Act authorizing the borrowing thereof shall have priority against the company and the property from time to time of the company over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act."<sup>83</sup> Thus by this clause, the holders of debenture stocks were clothed with an indisputable claim of priority against the company over the holders of Lloyd's bonds and other irregular securities. This measure was without doubt urgently needed for improving the desirability of railway debentures.

Section 26 of this act provided that "money borrowed by a

<sup>81</sup> Railway Companies Act, 1875, 38 & 39 V. c. 31.

<sup>82</sup> The Railway Companies Act, 1867, 30 & 31 V. c. 127, ss. 6-22.

<sup>83</sup> 30 & 31 V. c. 127, p. 23.

company for the purpose of paying off, and duly applied in paying off, bonds or mortgages of the company given or made under the statutory powers of the company, shall . . . be deemed money borrowed within and not in excess of such statutory powers."

As we have seen, the railways had much trouble in meeting their mortgages falling due. It has also been shown that there was much difficulty over the fact that securities issued temporarily in excess of the borrowing powers even in anticipation of paying off debentures falling due were sometimes regarded as illegal. By the above provision Parliament endeavored to remove this difficulty; and subsequent events have amply shown that the effort of Parliament was not in vain. That such a provision had been urgently needed, few men who are familiar with the financial affairs of English railways can deny.

To make the debenture stocks more acceptable and easier to issue this act also removed all the restrictions prescribed in the Companies Clauses Act of 1863 as to the rate of interest.<sup>84</sup> Therefore, the companies and their investors were empowered to make whatever arrangements they saw fit in regard to the rate of interest.

Thus closed the legislation on the loan capital of railways in England. Based upon the acts just referred to, the Lord Chancellor in 1869 decided that railway companies should be held liable for all loans irregularly contracted and even in excess of its borrowing powers,<sup>85</sup> thus removing much of the temptation of railways to borrow illegally. Aside from the imposition,<sup>86</sup> since 1868, of a stamp duty of 2 per cent on the nominal value of the debenture stocks transferred, nothing new has been added to the principles laid down up to 1870. In spite of the temporary discontent with these measures of Parliament, the regulations seem to have proven on the whole satisfactory. With the additional security and facility given to railway debenture stocks it soon became common for railways to ask Parliament for powers to issue stocks to be appropriated solely to the liquidation and cancellation of debentures and other periodical loans falling due.<sup>87</sup>

<sup>84</sup> Sec. 25, 30 & 31 V. c. 127.

<sup>85</sup> *Economist*, August 7, 1869.

<sup>86</sup> Sec. 12, 31 & 32 V. c. 124.

<sup>87</sup> *Railway Times*, May 2, 1868.

The desirability of such stocks was well shown by the fact that by 1876 practically all the loans were converted into this class of securities.<sup>88</sup>

Our survey of this aspect of English railway finance leads to certain conclusions, briefly expressed as follows:

1. Other things being equal, long period debts or better still, perpetual and devisible debenture stocks redeemable at the option of the company are more desirable for railways than lump sum loans or mortgages falling due after short periods.

2. The action taken by the English Parliament in 1867 prohibiting the seizure of rolling stock, revealed the advanced ideas of that body and proved to be an effective measure for the establishment of stability in railway finance.

3. The function of a government in regulating the capitalization of railways by loans lies not so much in the adoption of many complicated restrictions as in the enforcement of a few essential rules, with a view of enabling the investor himself to tell the true financial condition of the concern in which he invests.

<sup>88</sup> Board of Trade, General Report on Railway Shares, Loan Capital, etc., 1876.

## CHAPTER IV

### CONTROL OF THE BORROWING POWERS OF RAILWAY COMPANIES

In early years borrowing powers were granted to railway companies for the purpose of relieving the pressure of calls upon shareholders for new capital. There was no idea then that borrowings should become a permanent charge upon capital. Parliament and the companies alike were of the opinion that the vast profits to be derived from railways would speedily enable the latter to pay off their debts and in addition to declare dividends of a much higher rate than is now expected. The general belief was that railways were to be constructed with capital raised from subscriptions, plus a small proportion of loans for temporary purposes. It is hardly necessary to say that these illusions as to railway profits were soon dispelled. The idea of being able to pay off borrowed money, however, was retained for many years, and was not abandoned until the constant and increasing requirements for renewals, replacements, and improvements had grown beyond all expected proportions.<sup>1</sup>

With such a conception of railway borrowing in mind, Parliament endeavored, from the beginning, to limit the borrowing powers of railway companies as well as to lay down strict rules governing their exercise. Thus, in one of the standing orders,<sup>2</sup> which guided early railway legislation, it was provided that no railway company should be authorized to raise, by loan or mortgage, a sum of money larger than one-third of its share capital, and that until fifty per cent of the share capital should have been

<sup>1</sup> *Railway Times*, August 22, 1863.

<sup>2</sup> Standing Order No. 84. Cf. Remarks on Standing Orders by a Parliamentary Agent, London, 1837, p. 55, and *Railway Times*, April 27, 1844. Cf. also evidence before the select committee on railways, House of Commons, 1844, p. 29.



paid up, it should not be in the power of the company to raise any money by loan or mortgage.<sup>3</sup>

Thus from the beginning, two principles were laid down. First, no railway company should borrow more than one-third of its share capital; and secondly, no company should borrow at all until one-half of its share capital had been paid up.

The purpose of Parliament in so strictly limiting the powers of railway companies to one-third of their share capital was due first to the general belief, as already mentioned, that railways should be built only with their subscribed share capital, and second to the fact that strict limitation of loans was deemed necessary to give the creditors of the companies adequate security. The stipulation that 50 per cent of the share capital be paid up before the exercising of borrowing powers, was adopted with the hope that such a requirement would tend to place the shares in the hands of substantial investors as well as to strengthen the security of the debentures.

It was also held that no sellers of land or of material to a railway company could be prejudiced by the railway company issuing securities not authorized by the act of incorporation. The company was not entitled to call any credit or to pledge any part of their property for any other purpose, nor should the directors make any contract or sanction any engagements to pay money until they had clearly ascertained that from one or other of the two sources authorized by Parliament they had the power of fulfilling them.<sup>4</sup>

So far so good. But in practice these rules were not always observed. Much consideration was usually given to peculiar circumstances. The standing order just referred to was often "either dispensed with or modified so as to meet the circumstances of the case."<sup>5</sup> In fact another standing order provided for a select committee on standing orders, whose duty it was to

<sup>3</sup> As has been referred to in Chapter I the early railway acts were modelled after the Canal Acts, and the latter in the earliest years gave no power for borrowing. The first acts in which borrowing powers appeared were passed in 1770. By degrees this power of the Companies was restricted to one-third of their share capital. *Report of Royal Commission of Railways, 1867.* ¶ iii.

<sup>4</sup> Letter to the *London Times*, August 23, 1866.

<sup>5</sup> Remarks on Standing Order, pp. 78-79.

“determine whether the standing orders ought or ought not to be dispensed with.”<sup>6</sup> Moreover, it soon became clear that not only were the borrowings of railways to remain a permanent charge instead of a temporary obligation as was expected, but that the limit of the borrowing powers was altogether too narrow. The state of the money market and other circumstances frequently made it advisable for a railway company to raise a larger proportion of its capital by loans than the law permitted. Indeed it was only by over-borrowings that some companies continued to pay a fairly good dividend.<sup>7</sup>

Under such circumstances one may readily imagine what happened. When a railway company wished to increase its loans, especially when it could declare bigger dividends by such a process, it would find some way of so doing whether the law permitted it or not. Moreover, the law itself was too imperfect to be effective, for it only stipulated against the borrowing on mortgages and bonds, whereas there were other ways by which money could be borrowed. As was currently remarked at the time, one could always drive a coach and six through any law if he tried hard enough.<sup>8</sup> This was exactly what happened. Money was borrowed in many ways in excess of the legal limit, in spite of the law. The best known expedient for evading the restrictions of Parliament was by the issue of loan notes, for which the directors issuing them were personally responsible. By the issue of such loan notes the companies had “continually exceeded their borrowing powers.”<sup>9</sup> Thus the law prohibiting railways from borrowing more than one-third of their share capital on mortgages or bonds was evaded although not violated in letter.

The early restrictive measures upon railway borrowings coupled with what was done to evade them had generally a vicious effect upon the property of the original shareholders, especially when the company was not prosperous. In such cases, the borrowing powers were usually exhausted and hence no money could be obtained through that channel. Loan notes might be issued, but they were obligatory upon the directors

<sup>6</sup> Remarks on Standing Orders, pp. 13-14.

<sup>7</sup> *Railway Times*, April 27, 1844.

<sup>8</sup> Evidence before Select Committee on Railway Borrowing Powers, 1864, p. 22.

<sup>9</sup> *Report of Royal Commission on Railways*, 1867, p. xxiii.

personally instead of upon the company. The directors would naturally become more desirous of relieving themselves of their personal obligations according as the conditions of the company's finance became more desperate. Therefore, they would proceed to Parliament and obtain authority to issue shares either at a ruinous discount, or with an exorbitant rate of interest guaranteed upon them. The result would be an immediate depreciation of the value of the old stocks. The property of the original shareholders, who encountered the risk of forming the company, was often ruined, and the credit of the concern would also sink with the value of the old stocks. Thus it was claimed that the standing order limiting the borrowing powers of railway companies had a tendency either to prevent railways from raising their capital in the most judicious manner or to compel them to issue securities of an irregular character.<sup>10</sup>

Efforts were made, during the forties, to urge Parliament to abolish, or at least to broaden the limit.<sup>11</sup> Nothing, however, was done to remedy the situation. The law was neither modified nor enforced. Like many other stringent laws, it was consistently disregarded. In some cases, sums of money larger than the amount of the total authorized share capital were borrowed through loan notes or other similarly illegal instruments.<sup>12</sup>

The worst effect was that the public did not understand clearly that such loan notes were illegal, and were astonished when it was declared by the select committee of the House of Commons, 1844,<sup>13</sup> that these loan notes were "absolutely invalid," and that the lenders had no means whatever of enforcing the repayment of their money. The issue of such notes was not merely illegal but actually a breach of the original contract under which the act of incorporation was obtained. Thus this select committee on railways felt it highly important to adopt some means to prevent the recurrence of practices so "highly objectionable. . ." <sup>14</sup>

<sup>10</sup> *Railway Times*, April 27, 1844.

<sup>11</sup> *Ibid.*

<sup>12</sup> Report of select committee of the House of Commons on Railways, May 24, 1844. *Railway Times*, June 22, 1844.

<sup>13</sup> Fifth Report of Select Committee of the House of Commons, 1844. Cf. also *Railway Times*, June 22, 1844.

<sup>14</sup> *Ibid.*

At the same time it was noticed that although the existing transactions were illegal and contrary to the public policy, they were, nevertheless, of "a perfectly *bona fide* character" as between the borrowers and the lenders. The contracts were entered into without a distinct knowledge of the illegality. Moreover, the money so raised was applied for the execution of the work authorized by Parliament. Therefore, ignorance of the illegality of these securities should be considered.

With these problems in view, the select committee on railways after many sittings at which much evidence was taken, recommended the suppression of the issue of such illegal securities in the future. At the same time, it expressed the opinion that in order to avoid undue hardship upon investors and the danger of disturbing the existing *bona fide* engagements, certain provisions ought to be made by Parliament for the purpose of converting these loan notes into valid securities.

Following the recommendations of this committee, Parliament passed an act<sup>15</sup> in 1844 to the effect that "from and after the passing of the Act any railway company issuing any loan notes or other *negotiable*<sup>16</sup> or assignable instruments purporting to bind the company as a legal security for money advanced . . . other than under the powers of some Act or Acts of Parliament, . . . shall for every such offense" be liable to a fine equal to the sum for which such loan notes purported to be a security. The companies, however, were permitted to renew their loan notes issued prior to the passing of the act for any period not exceeding five years from the passing of the act.

It was also provided that companies should pay off all their notes issued or contracted to be issued before July 12, 1844, as the same might fall due, and that a register of all such loan notes, etc., should be kept by the secretary of the company, which should be open, without charge, at all reasonable times to the inspection of persons interested.

In the Companies Clauses Act of 1845, considerable attention was given to the question of railway borrowing powers. The general rules governing the borrowing powers of railway com-

<sup>15</sup> The Regulation of Railways Act, 1844, 7 & 8 V. c. 85.

<sup>16</sup> Italics are mine.



panies, laid down in this first Clauses Consolidation Act, may be briefly summed up as follows:

(1) Borrowing powers must first be obtained from Parliament.

(2) All borrowings must be executed according to the provisions and regulations contained in the acts granting such powers.

(3) All borrowings must be sanctioned by an order of a general meeting of the company.

(4) In no case must such borrowings exceed in the whole the sum prescribed in the special acts of Parliament, which sum was generally limited to one-third of the share capital of the company.

(5) Fifty per cent of the aggregate sum of the share capital must be paid up.

For the enforcement of these rules, it was provided that the certificate of a justice of peace and a copy of the order of a general meeting should constitute sufficient evidence of powers to borrow. Rules governing the manner of transfers of such securities as well as the registration of the same were prescribed in detail.

To strengthen these rules, it was further provided that "at all reasonable times the books and accounts of the company shall be open to the inspection of the mortgagees and bondholders. . . with liberty to take extracts therefrom, without fee or reward."

Thus within two years, the issue of loan notes, which was one of the most effective instruments for evading the law, was placed under severe penalty, and the general rules governing the borrowing powers of railways as well as the methods for their enforcement were codified into a general act. But in both cases loopholes were left, through which these rules were practically nullified. In the case of the prohibition against loan notes the phraseology of the law led some railways to construe, not without reason, that the enactment applied only to *negotiable* securities, as specified in the enactment, and not to the mere borrowing of money on instruments not negotiable. At any rate, some railways made this their excuse to evade the restrictions against over-borrowing. A new form of notes was soon devised by an expert lawyer which proved to be of greater consequence than

the earlier form of loan notes. In the case of the general law restricting over-borrowing, the regulations, *per se*, were strict enough. But the enforcement of these regulations was left entirely in the hands of the country justices. Under the act, these justices, with their knowledge, or rather lack of knowledge, regarding the complicated system of railway finance and accounting, were depended upon to ascertain whether or not a railway had fulfilled the requirements of the law governing its borrowings; and their findings were final.

Moreover, in spite of the general law, considerable irregularity appeared to have existed in practice. Thus in their third report,<sup>17</sup> the select committee on railways appointed by the House of Commons in 1848, three years after the first general act was passed, pointed out that some bills of that session appeared "to contain irregular or undefined powers of raising money. . . ." This committee also pointed out that the most objectionable provisions were the general powers for raising money to pay off debts of the companies, when the bills contained no distinct recital of the facts or specifications of the amount.

In spite of such irregularities, it may be said that the first period of the legislation on railway borrowing powers was closed by the act of 1845. With the exception of the provision contained in the Abandonment of Railways Act, 1850,<sup>18</sup> providing for the reduction of borrowing powers in proportion to the amount of work abandoned, nothing very important was done during the following fifteen years to alter the established rules.

In 1856 agitation for the more strict regulation of railway borrowing powers was revived. A prominent member of the House of Lords<sup>19</sup> endeavored to insert clauses in the railway bills seeking legislation during the session of that year to the effect that no money should be borrowed by a company except on the authority of a minute signed by a majority, at least, of the directors for the time being of the company, and such minutes should be published in the *London Gazette* before any money be raised under the same; and if any money should be borrowed beyond

<sup>17</sup> General Report of the Board of Trade on Bills of the Session. 1863, p. 19.

<sup>18</sup> 13 & 14 V. c. 83.

<sup>19</sup> Lord Redesdale. See *Railway Times*, April 26, 1856.

the powers given by this proposed act, the directors signing the minute authorizing such borrowing should be personally liable jointly and severally for the amount so raised beyond the powers.

The purport of the provision was to prevent the companies from exceeding their borrowing powers, by making the directors personally liable for such offenses. This aroused much opposition. It was feared that it would alarm the public mind and shake the confidence of directors in their colleagues. In speaking of this provision, the *Railway Times*<sup>20</sup> editorially remarked that it was "so fraught with evil, so redolent of injustice, and so hostile to the whole moneyed world that deals or invests in debenture securities, that it cannot be tolerated."

The required advertisement in the *London Gazette* was regarded as worse than useless. Attention was called to the fact that it was not always prudent for a purchaser, and frequently less so for a borrower, to announce that he must obtain a certain sum of money. These announcements in the *London Gazette*, though they might be overlooked by the mass of the community, would be keenly scrutinized by the "sensible" commission agents, who had no money of their own but who played a great part in keeping others' money in circulation. As soon as the advertisement appeared in the *Gazette*, it was feared that "the highest existing rates of interest" would be "uniformly" exacted from the borrowing company.

Moreover, if the directors were made personally liable, as provided by the clause, it would prevent good men from taking up seats in railway directorates. Even without any such liabilities, railway companies had already found it hard to find really "good and upright men to undertake the onerous but thankless duty of directors."

No open opposition was made in Parliament. But the Parliamentary committee in charge of the matter unanimously rejected the clause even without hearing the arguments of those who were prepared to oppose it.<sup>21</sup>

But the question of borrowing powers of railways was still a live one. In the Lands Clauses Consolidation Act of 1860 pro-

<sup>20</sup> *Railway Times*, April 26, 1856, from which the other quotations in this connection are taken.

<sup>21</sup> *Railway Times*, May 3, 1856.



vision was made to the effect that, in case the proprietors of a railway agreed for the purchase of any land in consideration of the payment of a rent charge, annual feu duty or a ground annual, the borrowing power of the railway should be reduced by an amount equal to twenty years' purchase of any rent charge, feu duty or ground annual, for the time being payable.

In the following year the question of the borrowing powers of railways came up again. In petitioning for authority to increase their share capital for the purpose of subscribing to the undertaking of another company, some railway companies endeavored to extend their borrowing powers in proportion to such additions of share capital. On the surface, this extension of borrowing powers seemed permissible, in that the borrowings would be still within the limit of one-third of the share capital. But upon examination the Board of Trade concluded that any extension of borrowing powers based upon the share capital created for the purpose of subscribing to the undertaking of another company was inconsistent in principle with the rule laid down by Parliament which provided that "in the case of a railway bill no company shall be authorized to raise by loan or mortgage a larger sum than one-third of their capital."<sup>22</sup> In order to test the consistency of such extension of borrowing powers, it was necessary to go back to the original object of the rule just referred to. This was that the mortgage creditors of a railway company might have the security of a definite undertaking, on which a subscribed capital was to be paid up to an amount not less than three times as great as the sum to be borrowed. If a company were empowered to borrow on the basis of an increase of its share capital to be used for subscribing to the undertaking of another company, the lender of money so borrowed would not derive any additional security whatever from such creation of new capital, for this additional share capital would not be laid out in the subscribing company's undertaking, on which alone the lender would have a charge, but elsewhere. Thus, the spirit of the rule of Parliament would be destroyed. Moreover, if this request of the railways were granted, the additional share capital

<sup>22</sup> The 126th standing order of the House of Commons and the 189th standing order of the House of Lords. See General Report of the Board of Trade on Railway Bills, 1867, p. 25.



would be made the basis by both the subscribing and the receiving companies for an extension of their powers. Accordingly the Board of Trade recommended that such requests be not granted.<sup>23</sup>

About 1855, as has been shown in a previous chapter, debenture stocks came into vogue as a security in place of debenture bonds, and Parliament took steps to reduce the borrowing powers of the companies in proportion to the amounts represented by the debenture stocks issued. In every railway bill seeking power to issue such stocks, provisions were made to the effect that after the issue of such debenture stocks or the conversion of any mortgages or bonds into such stocks, "it shall not be lawful for the company to issue mortgages or bonds, or any other securities, or again to borrow the sum so converted," and the borrowing powers of the company should be decreased by the amount so borrowed, converted or raised by the issue of debenture stocks.<sup>24</sup>

The growing popularity of such debenture stock led the Board of Trade to make repeated recommendations, beginning about 1858, for the adoption of some general regulations governing the issue of debenture stocks. Among other things, it recommended (1) that the powers to create such stocks should be defined; (2) that money should not be raised by debenture stocks in lieu of borrowing until such money might be raised by the exercise of the borrowing powers of the company; and (3) that to the extent of the nominal amount of the debenture stocks disposed of, the borrowing powers should be extinguished.<sup>25</sup> Following these recommendations of the Board of Trade, Parliament inserted a clause in the Companies Clauses Act of 1863<sup>26</sup> to the effect that the "power of borrowing and re-borrowing by the company shall, to the extent of the money raised by the issue of debenture stock, be extinguished." As is seen, this was not a new principle, but an old one embodied in a new act.

Thus we see that prior to 1863 the question of the borrowing powers of railways was not of any great popular interest, although it had always been considered of considerable importance in railway legislation. The custom of limiting the borrowing

<sup>23</sup> *Ibid.*

<sup>24</sup> 15 & 14 V. c. 83.

<sup>25</sup> General Report of the Board of Trade on Railway Bills, 1861, p. 24.

<sup>26</sup> 26 & 27 V. c. 118, Sec. 34.

powers to one-third of the share capital of railway companies had been established. The public had seldom thought of changing the established rules. They also imagined that the restrictions laid down by Parliament were observed. With some slight exceptions, the act of 1845 was considered as sufficient to safeguard the interest of the security-holders. In fact there was an idea that the recording of securities by the secretaries of the companies was a sufficient protection without an examination into the details of the company. When the investor got his debenture, he never thought of searching the company's books. It would be useless; "it was never done; people trusted to its being correct."<sup>27</sup>

But under this smooth surface, something unexpected was taking place. The borrowing powers of many railway companies were grossly abused or exceeded. In the first place a cry was raised against the restrictions on borrowing powers to the effect that they were too strict and that the limit was too small. Companies were frequently in urgent need of larger sums of borrowed money either to carry on works or to repay debentures falling due. This difficulty was encountered in the common practice of companies issuing bonds to agents in several of the moneyed circles in the country. By so doing the company would often suddenly discover itself to have borrowed, through its various brokers, a larger sum than was permitted to it. Then whatever securities were issued over and above the limit were illegal. Such illegal issues, however, were not practically very objectionable, and Parliament often recognized such over-issues in spite of their illegality.<sup>28</sup>

But intentional breaches of the borrowing powers were also made. Some of the companies which were the least entitled to exercise such power were the most eager to exercise it. To get around the restrictions, they resorted to fictitious subscriptions and other improper methods. They filled their subscription lists with the names of "men of straw," and they nominally fulfilled the requirement of having one-half of their share capital paid up not with payments, however, made by *bona fide* subscribers, as contemplated by Parliament, but through the agency

<sup>27</sup> Evidence before select committee on borrowing powers of railway companies, 1864, pp. 6-10.

<sup>28</sup> *Railway Times*, September 12, 1863.

of contractors' contributions or advances made by financial agents. As soon as the requirements of law were in some such way complied with, they would immediately have recourse to their borrowing powers. In many cases, the line was constructed almost entirely with borrowed money, without any funds being left for the equipment or working of the road. Then the promoters would go to Parliament to ask for powers to cancel their ordinary shares which had been created but not disposed of and to issue, instead, preference and other shares with claims prior to those of the ordinary shareholders.<sup>29</sup>

Fraudulent breaches of the law were also quite common. As in the case of the West Hartlepool Harbor and Railway, it was discovered after a protracted inquiry by a select committee that vast frauds had been committed. The company under its three separate acts of Parliament was authorized to raise £2,100,000 with power to borrow to the extent of one-third of the sum paid up for shares. Thus, even if the whole share capital had been paid up, which was not the case, the amount the company would have been empowered to borrow was £525,000. But the company actually borrowed £2,700,000, without any authority from Parliament.<sup>30</sup>

The discovery of this fraud discredited railway debentures more widely than did even the panic of 1847. The mind of the public was appalled when it was shown that all this fraud was done in spite of the "duly authorized, properly circulated" half-yearly accounts and in spite of the service of the "Committee of Assistance" who helped to keep the company's affairs straight. The debenture-holders felt that they possessed no security either in the acts of Parliament or in the returns of the Board of Trade, and much less in the half-yearly accounts of the companies. In spite of all the restrictions and protection which Parliament appeared to have given, he might be robbed of his money at any time.<sup>31</sup>

It was, however, not the mere breaking of the law, but the effect of such breaches upon the investors, that proved especially obnoxious. When a company over-issued securities contrary to

<sup>29</sup> *Railway Times*, May 2, 1868.

<sup>30</sup> Hansard, 171: 1302-1303.

<sup>31</sup> *Economist*, June 22, 1863, pp. 674-675.



law, much hardship must necessarily fall upon somebody. The securities issued over and above the borrowing powers were illegal, and hence the holders of such securities had no status before the law. If the principal and interest were paid to the holders of such illegal securities, the money must come from somewhere. If they were not paid, they would be losers. The holders of the legal securities would justly oppose the reduction of their interest to pay the holders of illegal debentures. They advanced their money upon legal security and they would object to anyone else receiving one farthing until their claims were satisfied. These holders of legal securities, who had no share in the management of the company, certainly should not be made to suffer by the misconduct of persons over whom they had no control. Nor should they in equity suffer simply because other people had lost money upon purchasing illegal securities.

Then it was urged that the holders of the excessive debentures who advanced their money without any legal security should stand the loss. At first sight this appeared permissible. But the true state of affairs showed that this was too harsh a measure. It was true that these holders of excessive debentures had no legal claim to depend upon; but it was also true that this was not entirely their fault. Their money was advanced in a *bona fide* manner. The company had received their money into its hands and had either spent it on its authorized works, or still retained it in its treasury. Moreover, it was likely that neither the shareholders nor the holders of legal securities could have derived their income were it not for the money advanced by the holders of such illegal securities.

Finally it appeared that the shareholders, who in law had the power to appoint directors and the managers of the business and whose employees issued such illegal debentures, should be made responsible. But there were also many practical objections to this course of procedure. In the first place, it was pointed out that these shareholders bought their stocks on the express assurance embodied in the acts of Parliament that there should be only a certain amount of fixed charges against the company with a prior claim over their dividends. Although theoretically they had the power of appointing the managers and directors, many of them, in reality, were no more responsible for the conduct of



their so-called employees than the other classes of investors. They had more enterprising spirit in investing their money in the stocks of the railway, but they certainly should not be punished for that enterprising spirit which was much needed.

All these and many other difficulties as shown elsewhere in our study were direct results of the evasion and overriding of the borrowing powers which Parliament had taken special and constant care to prescribe.

As mentioned previously, the issue of loan notes or other negotiable or assignable instruments purporting to bind the company as security for money advanced, was, since 1845, prohibited. Owing to the narrowness of the limit of borrowing powers and some less laudable reasons, some companies soon discovered an ingenious way to get around this restriction. They devised the well known device of Lloyd's bonds to bridge over the barrier against loan notes. These instruments were issued neither as negotiable securities nor for "cash-advances," but as acknowledgments of obligations for work done, materials supplied, or for debts contracted in excess of their borrowing powers.

The original purpose for which these bonds were devised was, however, not altogether bad, and the circumstances under which they were supposed to be used also appeared to justify their existence. As often happened, a railway company suddenly discovered that its expenditures were underestimated or its resources overestimated. In either case the directors were in difficulty. They were compelled under severe penalty to complete their work within a definite time.<sup>32</sup> Their funds were exhausted. The contractor would refuse to continue the work without pay, and the directors had no money to pay him. Moreover, if the work was left to stand still, not only the capital already spent would remain unproductive and the work itself deteriorate, but the contractor would sue. Naturally a question would arise

<sup>32</sup> In each Railway Act there is always a clause stipulating the time when the line must be completed and the penalty for failure. Clause 34 of the Model Bills of the House of Lords, 1909, says that "if the railway is not completed within five years from the passing of this Act, then on the expiration of that period the powers by this act for making and completing the railway or otherwise in relation thereto shall cease except as to so much thereof as is then completed," and clause 35 provides that deposit money shall not be repaid except so far as railway is opened.

as to what should be done. As the law did not prohibit railway companies from securing their debts contracted for the execution of the *bona fide* purpose of their undertaking, the directors would, therefore, make some sort of an arrangement with the contractor by which they would furnish him from time to time with acknowledgments of indebtedness, under seal of the company, for the amount due to him on account of work done. On these evidences of credit the contractor could secure money. In this way Lloyd's bonds were issued to give time to the debtor company instead of pressing it to issue shares and debentures at great sacrifice.

This was the way in which Lloyd's bonds were originated and in many instances used to the advantage of railways and the public; and they appeared quite desirable. No tenable argument seemed to have been advanced to show that a railway company should not issue to its contractors acknowledgments of indebtedness for the amounts actually due them on account of work actually executed. Indeed, it was claimed that "if restricted to their proper purpose, Lloyd's bonds would have been a useful and certainly not inconvenient invention."<sup>33</sup> But these bonds were soon issued for different purposes. Speculative undertakings were gotten up with hardly any hope of securing money through subscription; and these bonds were issued at "an enormous sacrifice" in order to get the undertaking completed. Ultimately debentures had to be issued. The result of such a procedure was a great extra cost to the shareholders and the owners of the property in general.<sup>34</sup> Swindling schemes were also floated through the instrumentality of these bonds to coerce some existing companies to purchase or lease at outrageous prices.<sup>35</sup>

Moreover the employment of the device tended to deceive the investing public. With the current conception that the borrowing powers of railways were strictly limited, investors were seduced into a belief that the work was so far completed with money raised in accordance with the requirements of the acts of

<sup>33</sup> *Railway Times*, December 15, 1866.

<sup>34</sup> Evidence before Select Committee on Railway Borrowing Powers, 1864, p. 35.

<sup>35</sup> *Ibid.*, p. 19.

Parliament; while in reality their later investments instead of being applied to further prosecution of the work, had to be diverted to the payment of debts of which these new subscribers (the only subscribers, for that matter) were ignorant.<sup>36</sup>

On the other hand it was contended that the complaint against Lloyd's bonds that they represented a violation of the borrowing powers of the company, was unfounded. These bonds could be a violation of the borrowing powers only when they were issued in excess of the borrowing powers of the company; but it was only occasionally that they were issued in excess of such borrowing powers.<sup>37</sup> But this argument neglected the fact that railway companies could violate the law without exceeding the limit of their borrowing powers. The companies were authorized to raise so much money on shares and so much on loans. The latter privilege was not to be resorted to until the whole of the former had been subscribed and one-half of its total amount paid up. Some companies, however, whose undertakings were of such an unpromising character that they could neither secure subscriptions nor make calls, and whose borrowing powers consequently did not materialize legally, would evade the law by resorting to Lloyd's bonds.<sup>38</sup> Although the amount raised was not in excess of the borrowing powers, the issue of such bonds was illegal nevertheless.

Moreover, as is usually the case with such convenient and yet illusive schemes, these Lloyd bonds soon lost their original identity. In fact by 1864, the original purpose and the proper function of these bonds were practically forgotten. Instead of issuing them to contractors for work done in order to relieve temporary pressure, companies used them in coupon form for raising money<sup>39</sup> and also put them into circulation as negotiable securities.<sup>40</sup> Some directors incurred heavy obligations by the issue of these bonds even without consulting the shareholders and without the knowledge of the holders of statutory debentures.<sup>41</sup>

<sup>36</sup> *Railway Times*, December 15, 1866.

<sup>37</sup> *Daily News*, January 18, 1864, quoted by *Railway Times*, January 23, 1864.

<sup>38</sup> *Railway Times*, January 23, 1864.

<sup>39</sup> Evidence before Select Committee of 1864, p. 31.

<sup>40</sup> Hansard, 182: 183.

<sup>41</sup> *Report of Royal Commission on Railways*, 1867, p. xxiii.



Indeed, within a few years after their first use Lloyd bonds became quite extensively circulated, and represented several million pounds in nominal value. In some cases they were even regarded as statutory securities.<sup>42</sup> Thus their extensive application, and the purposes to which they were applied, led the *Railway Times* to say that "no other name than fraud can be given to transactions of this description, and the eminent legal ability which has been exercised in drawing up the instrument so as to keep it out of the range of criminality must accept its share of discredit. . . ." <sup>43</sup> These instruments "might or might not be within the strict limit of legality," stated a member of Parliament,<sup>44</sup> "but they certainly had a tendency to be made a most fruitful means of deception and concealment of the real position of the company's affairs."

The effect of this expedient was the total evasion of the statutory limitations of borrowing powers. While the legal borrowings were limited to only one-third of the share capital, the illegal borrowings by Lloyd bonds were subjected to no limitation whatever. Thus the precaution of the legislature for the protection of the holders of statutory securities was nullified. This coupled with the numerous and varied excuses offered by the companies for exceeding their borrowing powers in other ways resulted in much confusion of the whole situation.<sup>45</sup> The investor had no means of ascertaining whether or not the borrowing powers of a company had been exceeded, and consequently whether or not the securities offered by that company were worthless. They had to trust the railway returns made by the companies to the Board of Trade, but they had no means whereby to verify the accuracy of these returns.<sup>46</sup> If these returns were made with strictness, they might in themselves form a good prevention against over-issue of securities, or at least give some valuable information. But these returns, besides not being always accurate, were not made until the end of each year and were not published by the Board of Trade until August or September of the year following. In the meantime the public

<sup>42</sup> Evidence before Select Committee of 1864, p. 127.

<sup>43</sup> *Railway Times*, June 25, 1864.

<sup>44</sup> Marquess of Clanricarde in the House of Lords, Hansard, 199: 1972.

<sup>45</sup> Hansard, 181: 338.

<sup>46</sup> *Railway Times*, September 12, 1863.



had to depend upon such "miserable and imperfect" extracts therefrom as were given in the daily papers.<sup>47</sup> Moreover, the acts of Parliament were sometimes in such a state of confusion that some of the railway companies themselves did not know what their borrowing powers were.<sup>48</sup> Thus the position of the debenture-holders became exceedingly unsatisfactory. By the kind of false shield which had been thrown over the debentures through the limitation of borrowing powers, the public was led to believe that the debenture-holders had a protection which they really never had.<sup>49</sup>

Being faced by such a serious situation, some people advocated that borrowing powers should be abolished altogether. They argued that "this Gordian knot, respecting which so much trouble is taken to render it difficult to unloose, could be cut in an instant. Abolish borrowing powers for the future, except in so far as advances may be made on calls. Let no company . . . raise capital by any other means than subscription for shares. Let existing bonds be converted into debenture stock, and the whole difficulty will be found to have 'vanished like a guilty thing away.' "<sup>50</sup>

Certain members of Parliament seemed to be alive to the serious nature of the situation. A resolution was introduced in Parliament to the effect that the issue of securities should be taken away from the directors appointed by the shareholders and placed in the hands of persons representing the creditors. The extreme character of this resolution reveals to a certain extent the anxiety with which people searched for remedies. But it was regarded as being of too novel a character and was withdrawn.<sup>51</sup>

Parliament, however, felt obliged to take some steps. As most legislative bodies would have done under such circumstances, the House of Lords appointed a select committee in 1863 "to inquire into the whole situation and report as to what legislative measures are desirable for the purpose of restraining the direc-

<sup>47</sup> *Railway Times*, September 26, 1863. Evidence before Select Committee on Borrowing Powers of Railways, 1863.

<sup>48</sup> Evidence before Lords' committee of 1863. Cf. *Railway Times*, September 26, 1863.

<sup>49</sup> Evidence before Lords' Committee of 1864, p. 33.

<sup>50</sup> *Railway Times*, September 12, 1863.

<sup>51</sup> *Railway Times*, August 22, 1863.

tors of railway companies from exceeding the limits of the borrowing powers fixed by the Act of Parliament."<sup>52</sup> The committee made two reports, in which some methods for the enforcement of the rules governing borrowing powers were recommended.<sup>53</sup> In the same year when the Companies Clauses Bill was considered in committee, a member in the House of Commons<sup>54</sup> moved the addition of a clause requiring companies possessing borrowing powers to make an annual return to Parliament of the capital which they had raised, with the object of preventing the recurrence of cases like that of the West Hartlepool Company<sup>55</sup> or any similar violation of the provision forbidding companies from raising money on debentures or mortgage until one-half of their share capital was paid up. The clause, however, was rejected for technical reasons.

But the alarm which resulted from the general lack of information regarding the condition of the borrowing powers of railway companies continued. Therefore in 1864 the House of Lords felt it expedient to appoint another select committee to continue the inquiry commenced in the previous session. The purpose of appointing this committee as well as that of appointing the previous one was to devise some means whereby directors might be restrained from exceeding the limits of their fixed borrowing powers. Parliament appeared to believe that there was no question as to the merits of the established rules limiting the borrowing powers of railway companies. The only thing needed was to find some efficient way of enforcing these rules. Therefore, Parliament reasserted its intention of restricting such borrowing powers through the Railway Construction Facilities Act of 1864<sup>56</sup> in which provisions were made whereby every company which wished to borrow money was subjected to the following restrictions:

(1) "They shall not exercise the said powers of borrowing any money until the whole of the share capital authorized by the certificate is subscribed for or taken, and until one-half thereof is actually paid up, and

<sup>52</sup> Hansard, 181: 385-386.

<sup>53</sup> For the recommendations of this committee, *cf. infra*, Chap. V.

<sup>54</sup> M. D. Hassard. *Cf.* Hansard, 172: 935-936.

<sup>55</sup> See Appendix to Report of Select Committee on Railway Borrowing Powers, 1864, and Hansard, 171: 1302-1303. *Cf.* also *supra*, p. 92.

<sup>56</sup> 27 & 28 V. c. 121.

until they prove to the justice who is to certify under section 40 of the Companies Clauses Consolidation Act, 1845, . . . before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares were taken in good faith, and are held by the subscribers or their assigns who are legally liable for the same.''

(2) "They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorized by the certificate."

The latter part of the first clause was especially important, in that it required not only all shares should be taken in good faith but not less than one-fifth of the amount of *each* separate share had to be paid up before a company could resort to its borrowing powers. This provision put a strong check against the practice of inducing "men of straw" to sign up subscriptions and using borrowed money to meet the requirement of paying up one-third of the share capital. It has proven so useful that provisions similar to it have been invariably inserted in railway acts since.<sup>57</sup>

This closed the legislative measures concerning the borrowing powers of railway companies. As has been shown, Parliament held from the beginning to the idea of limiting the borrowings of railways to one-third of their share capital, and has consistently adhered to this principle throughout. Whenever the question of borrowing powers came to its notice, all it endeavored to do was to adopt measures to meet the changed circumstances with the purpose of maintaining the borrowing limit. Parliament appeared to believe that the merits and necessity of limiting railway borrowings to one-third of the share capital had passed beyond the stage of argument. All that was needed was to see that the limit was not exceeded. The idea of inquiring into the adequacy of this limit itself did not seem to have been entertained. Nor did Parliament appear especially desirous to find out what were the causes which led railway directors to exceed their borrowing powers. Even the fact that the established custom of borrowing on other good securities invariably warranted a larger proportion of loans than one-third of the share capital failed to induce Parliament to inquire into the advisability of modifying such restrictions.

<sup>57</sup> Cf. Clause 7 of the Model Bill of the House of Lords, 1909.

The legal limit of the borrowing powers was thus quite definite. In practice, however, considerable latitude seems to have been given to the companies as shown by the following table:

PROPORTION OF BORROWINGS TO TOTAL PAID-UP CAPITAL

Name of Company	1860	1870	1880	1885	1890	1895	1900	1907
	%	%	%	%	%	%	%	%
Great Eastern.....		33	32	31	32	31	32	33
Great Northern.....	15	23	24	25	22	26	25	25
Great Western.....	28	35	25	24	24	24	25	24
London, Chatham and Dover.....	20	29	29	29	30	30	31	
London and North-Western.....	27	28	25	26	27	32	32	32
Mersey .....			0	22	40	40	41	44
Metropolitan .....		24	29	27	29	27	26	28
Midland .....	19	22	23	21	29	28	21	22
North Eastern.....	28	25	24	24	24	26	31	30

These railways were picked at random, with some reference to their location. The percentages were calculated from the figures given in the Board of Trade returns. It is clearly seen that some of these railways considerably exceeded the limits of their borrowing powers. While the legal limit was 33 per cent of the shares and 25 per cent of the total paid up capital, some of the companies for a number of years borrowed to the extent of 30 per cent or more of the latter capital. The Mersey for a number of years even borrowed to the extent of more than 40 per cent of the total capital. There were other railways which did likewise. The writer does not pretend to say that such "excessive" borrowings were bad in themselves, nor does he maintain that Parliament should not have given some latitude to the enforcement of its rules; but his study of the contemporary opinion leads him to feel that much difficulty arises from the loose enforcement of strict rules.

If the whole railway system of the kingdom is taken into consideration, similar irregularities seem to have existed. Thus, in 1860 the loans equaled 23 per cent, in 1870 they equaled 27



per cent, in 1880, 25 per cent, in 1890, 26 per cent, in 1900, 28 per cent, and in 1907, 27 per cent of the total paid up capital.

So far as the writer has been able to discover, the strenuous adhesion of Parliament to the idea of limiting the borrowing powers of railway companies to one-third of their share capital arose simply out of the desire of giving security, by that means, to the holders of legal debentures. Yet if railways had been permitted to borrow to the extent of one-half or even two-thirds of the *bona fide* share capital it seems hardly likely that thereby the debenture holders would have been deprived of a reasonable security. It hardly admits any doubt that it is desirable for a government to limit the facilities for constructing railways with other people's money; yet too stringent regulations are liable to be as harmful as the lack of regulation.<sup>58</sup> English experience seems to justify the statement that broad but vigorously enforced restrictions may prove more beneficial than narrow but loosely enforced limitations.

Another fact which calls for attention is that one of the chief difficulties which English railways and the investing public had in regard to the question of borrowing powers, was the lack of true information concerning the real condition of such powers and the actual state of affairs of the companies. Half the time, neither the public nor the companies knew what actual powers existed. These facts lead to the opinion that if more efforts were made to clarify railway affairs in general and railway borrowing powers in particular, much difficulty might have been avoided and better results obtained.

<sup>58</sup> Cf. Hadley, *Railroad Transportation*, 1903, p. 54.

## CHAPTER V

### REGISTRATION OF RAILWAY SECURITIES

From the two preceding chapters it is clear that from the beginning of railway enterprise, Parliament intended to give ample protection to the holders of legal securities, and that for the purpose of affording such protection it endeavored to restrict the borrowing powers of railway companies. It is the purpose of this chapter to elucidate the principal methods by which Parliament tried to restrict such borrowing powers.

In the early acts, by which railway companies were incorporated or enabled to raise money on mortgages or bonds, provisions were made to the effect that an entry or memorial of all mortgages or assignments should be made in the registers of the companies within fourteen days from the time when the assignment or mortgage was made, and that such registers should be open to the inspection of the proprietors or other interested persons at all reasonable times without charge.<sup>1</sup> Provisions were also made requiring the registration of the transfers of such securities in the companies' registers within twenty-one days of the execution of that transfer. It was only after such registration that the assignee might be entitled to the full benefits and payments of the securities transferred.<sup>2</sup> Clauses to the above effect were inserted in the private railway acts during

<sup>1</sup>Section cxix of the London & Croydon Railway Act, 1837, provided that "An entry or memorial of such mortgage or assignment, containing the numbers and dates thereof, and the names of the parties, with their proper additions, to whom the same shall have been made, and of the sums borrowed, together with the rate of interest to be paid thereof, be entered in some book to be kept by the secretary or clerks of the said company; which said book may be perused at all reasonable times by any of the proprietors or mortgagees of the said undertaking or other persons interested therein, without fee or reward."

<sup>2</sup>For the registration of each transfer, the company should be paid the sum of two shillings and sixpence. *Ibid.*

many years, and were found quite beneficial, and so in the Companies Clauses Consolidation Act of 1845, we find general provisions made for the registration of railway securities. In substance, these general clauses were similar to those of the earlier private acts, with the exception (1) that the time limit within which the transfers should be registered was extended from twenty-one to thirty days, and (2) that until such entry (of the transfer) was made the company shall not be in any manner responsible for the transfer of such mortgage, thus making the registration less rigid but of greater consequence to the security-holders. The latter did not appear eager to avail themselves of the provision of the early acts requiring the registration of the purchase and transfer of railway securities. It was felt that unless registration was made a condition of the validity of such securities, the provision would remain a dead letter. Hence, the new provision of 1845 was passed making it necessary to register all transfers in order to render the company in any wise responsible to the transferee.

Thus from the time Parliament began to prescribe the limit of railway borrowing powers, it adopted this system of registration as a means of securing the observance of the same. It thought that since all securities were registered in the companies' registers and since such registers were open to public inspection, there would be little chance for the companies to exceed the limit of their borrowing powers without being at once detected. But although the manner of registration was threshed out with much precision, the execution of such registration was left entirely in the hands of the companies. Prior to 1863, outside of occasional agitations, practically no effort had been made to modify these provisions. The general opinion was that the registration done by the companies themselves was sufficient to prevent irregularities. The public relied, and justly in ordinary cases, on the integrity of the companies.<sup>3</sup> Unfortunately, however, in some cases this reliance was ill-founded. Many companies made so little use of registration that they were not aware of the exact limits of their borrowing powers, as prescribed by Parliament:<sup>4</sup>

<sup>3</sup> *Economist*, May 2, 1863.

<sup>4</sup> Letter in *London Times*, August 23, 1866.

and many others purposely exceeded their limits in borrowing.<sup>5</sup> Indeed, the practice of overborrowing, as remarked the Earl of Donong,<sup>6</sup> actually reached the stage not only of illegality but of fraud. The public were told that Parliament had put a limit to the borrowing powers of railway companies, but they soon found out that under the semblance of this limit money was borrowed every day beyond the authority which Parliament had given.<sup>7</sup> Consequently, doubt, suspicion and dissatisfaction prevailed, which in turn depreciated the value of railway securities so much that they were sometimes called *insecurities*.<sup>8</sup>

This unsatisfactory state of affairs gave rise to agitation. A number of chambers of commerce and other commercial bodies petitioned Parliament in 1863 to modify the existing law, so that railway debentures might be required to be registered and put on the same footing as landed securities. Instead of the registers kept by the companies as required by the Companies Clauses Act of 1845, which really formed no security to the public, it was urged that there should be public registers kept in places of easy access.<sup>9</sup> A scheme for such registration<sup>10</sup> was presented to the select committee of 1863 to the effect that every railway company should be compelled to furnish the lender with a certificate stating that the latter was the registered proprietor of the undermentioned debenture bonds or other securities, duly sealed with the corporate seal of the company.

According to this scheme, these certificates were to be registered in the Bank of England by a public registrar and the registration was to be followed up with a series of acknowledgments which would place it beyond doubt. Holders of registered securities would alone be recognized as bondholders according to acts of Parliament and alone would be entitled to exercise the

<sup>5</sup> The West Hartlepool, the Cork & Yanhol, the Carmarthen and Cardigan, and the London, Chatham and Dover were in this class. Cf. *Economist*, June 20, 1863. Hansard, 182: 1580-1583, and *Economist*, December 22, 1866.

<sup>6</sup> Hansard, 177: 1297.

<sup>7</sup> *Ibid.*, 183: 869.

<sup>8</sup> *Economist*, August 12, 1865.

<sup>9</sup> Evidence before select committee of 1864 on Railway Borrowing Powers, 1864, p. 12.

<sup>10</sup> *Railway Times*, October 3, 1863.



rights of interference which the law accorded to mortgagees. On the other hand, if the holder of such securities failed to register he would not be deprived of his money or of his common law right, but simply of those extraordinary privileges which belonged to the rightful and recognized mortgagees.

To form a complete check, it was also urged that the Board of Trade should be furnished with returns showing the extent of the borrowing powers of each company. Then the proposed public registrar, being in an independent office, should furnish the Board of Trade with a return compiled from the registration of the securities of each company, showing the amount which each company had borrowed. By comparing these two independent returns, the Board of Trade could easily ascertain whether or not a company had exceeded its borrowing powers.

Another plan was proposed by the Deputy Keeper of the Signet of Scotland<sup>11</sup> to the effect that (1) public registers should be kept in London, Edinburgh and Dublin; (2) that all existing companies having debenture debts or stocks should be required to give to the respective registrars a return duly certified as on a certain date, specifying the acts of Parliament under which they were authorized to borrow money, the amount so authorized, the amount which the shareholders had authorized to be borrowed by resolution of general meetings, and the dates of such meetings, together with the amount of debenture bonds and stocks which had been issued and was then due and outstanding against each company; and (3) that all existing and future companies should be required to make returns from time to time of all acts thereafter passed authorizing the borrowing of money or effecting any changes of their borrowing powers.

He also proposed that each return should be registered in a separate book or a part of a book for each company. It should be incumbent on all companies, after the designated date, to transmit to the respective registrars for registration, before they were issued, all debentures and certificates of debenture stocks. The registrar should register these, entering the number, date, amount, etc., in a special form prepared for the purpose. A registration fee was also recommended. Then after such regis-

<sup>11</sup> See evidence before Lords' Committee of 1864, pp. 4-15.

tration the registrar should certify on each instrument the fact and date of such registration.

To form a complete check, he also proposed that it should be incumbent on the companies to send in for registration all debentures or other vouchers of debenture loans or stock which were discharged. These should be registered under a separate heading in the book or part of the book applicable to each company.

This system, it must be observed, was intended for the registration of all debentures or debenture-stock certificates to be issued thereafter. It was suggested that existing debentures should also be registered. The Deputy Keeper of the Signet, however, was of the opinion that it would be rather cumbersome to require the registration of all existing securities. Moreover, such a process would not afford any additional security than that afforded by simply requiring all companies to give the total amounts of securities which they had issued.

Others were of the opinion that it was necessary to have a public register of all transfers and renewals in addition to the registration done by the companies as provided by the Companies Clauses Act of 1845. Although such transfers or renewals did not affect the borrowing powers, their consummation should, nevertheless, be made more definite through a system of public registration. Accordingly, another elaborate form was recommended for the purpose.

A representative of the Board of Trade also suggested a form for registration purposes very similar to this.

Under such a system of registration, it was thought that ample protection would be afforded the public. By these tables the public could see the amount authorized by Parliament, the amount sanctioned by the shareholders to be borrowed, and the number of securities discharged. A comparison of the figures given in the proposed tables would indicate at once how much legal debt was out-standing against the company and the condition of the company's borrowing power. It was also recognized that there would not be much trouble to start such a system of registration, since a similar system of registration had already been used in the case of landed securities.<sup>12</sup>

<sup>12</sup> There were already registration offices under the Companies Act, 1862. Cf. Evidence before Lords' Committee of 1864, p. 4.

It was further urged that if the registrars were appointed with definite instructions to register nothing beyond what the companies were authorized to issue, the people would be able to tell at once whether any security was legal or not. It could be safely expected that no man would think of lending money upon debentures which were not registered.<sup>13</sup>

The agitation for a simple and effective system of registration appears to have been most keen; the matter was of wide interest. The general opinion of stock brokers, money-lenders, and the like was unanimously in favor of some sort of governmental registration. The railways as a whole, according to the representatives of some of the leading lines in the kingdom, entertained no objection against the compulsory registration of their securities.<sup>14</sup> Some of them would even welcome such a procedure. The solicitor of the Bank of England, which establishment was then a large investor in the securities of railway companies, was also strongly in favor of such a system of registration.<sup>15</sup> Indeed, the consensus of opinion as expressed before the Lords' Committee of 1864 was that the investors had too much trust in the honor of railway officials in connection with their borrowing powers and that a public registration of railway debentures, if constructed upon some simple principle, was needed to restore and maintain confidence. Such a system of registration would ultimately prove to be an advantage not only to the investing public but to the railway companies as well.

Furthermore, since neither investors nor borrowers were able to ascertain the legality of some of the existing securities, it was asked:<sup>16</sup> Why was it not feasible for the government to investigate and establish the legality of such securities for them? It was suggested that the Board of Trade might effectually do for every person what he could not do for himself, and which, even if it were possible for each individual, would have to be done over and over again by every successive holder of each railway debenture. Thus it was urged that the railway com-

<sup>13</sup> Evidence before Lords' Committee, 1864, p. 12.

<sup>14</sup> More than eight of the influential chambers of commerce openly expressed their desire for such a course of public registration. *Ibid.*, pp. 14-15.

<sup>15</sup> Hansard, 181: 338-9.

<sup>16</sup> *Economist*, May 2, 1863.

panies should be required to certify to the Board of Trade every new issue of debenture. Only after due examination and being satisfied that the company had not exceeded its borrowing powers, the Board of Trade should give the company stamped debentures for that specific amount. According to the opinion of the managing director of the Lands Improvement Company,<sup>17</sup> securities, unless so stamped, should not receive any legal recognition. By this process every debenture holder whose debenture had the mark of the Board of Trade impressed upon it would be sure that he held a good security. The credit of the companies would also be benefited by the removal of the existing suspicion.

The consideration of the matter was taken up by Parliament. As mentioned in a previous chapter,<sup>18</sup> when the special report and evidence upon the West Hartlepool Harbor and Railway bill were presented to the House of Lords, great alarm was felt over railway borrowings by that and other companies. Action by Parliament was obviously necessary if the alarm were not to spread. Accordingly in 1863 the House of Lords appointed a committee on railway borrowing powers to inquire and report as to what legislative measures were desirable to prevent the railway companies from exceeding their borrowing powers. This committee, therefore, recommended<sup>19</sup> that semi-annual declaration of the state of the borrowing powers signed by the chairman, the secretary, and a director of the company should be published in the *London Gazette* by every railway company exercising, or claiming to exercise, borrowing powers under any act of Parliament. In this declaration, the amount paid up and the amount which the company was legally authorized to borrow by the creation of debt, should be clearly set forth. These officers of the company should also declare that the total amount now raised by the company upon bonds or other securities did not exceed the above mentioned amount, upon which the company could legally borrow.

The committee also recommended that thereafter no mortgage

<sup>17</sup> Evidence before Lords' committee of 1864, pp. 22-33.

<sup>18</sup> Cf. *supra*, p. 118.

<sup>19</sup> This part of the committee's report and evidence are published in *Railway Times* for August 22, 1863. See also Report of Lords' committee, 1864, p. 27.



bond or any security for money should be issued by any railway company without having endorsed upon that security a certificate in the following form, to be signed by the chairman and secretary of the company:

“A. B. Railway Company. Date.

Bond for.....No....., being part of the total amount which this company can now legally borrow.”

A plan for the registration of all securities by an independent public office was suggested to the committee, but while the committee conceded that such a regulation “might operate for the security of the public,” it felt that it did not have sufficient time to give full consideration to the subject.

Parliament did not take any immediate action to give effect to those recommendations. But when the Companies Clauses Bill of 1863 was considered in committee in the House of Commons, M. D. Hassard moved the insertion of a clause requiring companies possessing borrowing powers to make an annual return to Parliament of the capital which they had raised. This motion was rejected on the ground that it was not proper to insert a provision of such importance into a bill which was only intended to consolidate the clauses commonly inserted in companies bills.<sup>20</sup> In the same year, however, in connection with the regulation of the issue of debenture stocks, Parliament adopted a provision for the registration of such stocks. This provision<sup>21</sup> did not contain any new principle. It simply made the rule regarding the registration, by the companies of mortgages, deeds, etc., applicable to the registration of debenture stocks. In the same act, Parliament also adopted a clause<sup>22</sup> requiring all companies to keep a separate account of debenture stocks, showing how much money had been received for or on account of debenture stocks. Also how much money was borrowed

<sup>20</sup> Hansard, 172: 936.

<sup>21</sup> Sec. 28 of the Companies Clauses Act, 1863, provided that the company should from time to time enter the debenture stock created in a register to be kept for that purpose. In the register it was to enter the names and addresses of the persons and corporations who are holders of such stock, with the respective amounts of each; and the register was to be accessible for inspection and perusal at all reasonable times to every mortgagee, etc., without charge.

<sup>22</sup> Sec. 33.

or owing on mortgage or bond, or which they had power to borrow, had been paid off by debenture stock instead of being borrowed on mortgage or bond.

At the same time some members of Parliament also considered the advisability of bringing in a bill for the purpose of carrying out the recommendations of the committee on railway borrowing powers of 1863.<sup>23</sup> But it was feared that those recommendations would be of little value unless provisions were made for general registration of debenture transactions. Moreover, it was still felt that further information was needed on the subject of registration before any efficient system could be adopted to cope with the situation. Therefore, another select committee was appointed in 1864, to continue the inquiry commenced by the select committee of the previous year.<sup>24</sup> In its report, this committee first of all recommended that requirement of a compulsory public registration of railway debentures and debenture stocks as an efficient means whereby to restrain the directors from exceeding the limit of their statutory borrowing powers.<sup>25</sup> The committee was also of the opinion that holders of statutory debentures duly registered should have a right to recover and secure the payment of all principal and interest due to them in priority to the holders of Lloyd's bonds, or of any other obligations or acknowledgments of indebtedness not issued under the authority of Parliament.<sup>26</sup>

Following the recommendation of this committee, the Registration of Railway Debentures, etc., Bill was introduced into the House of Lords in 1865.<sup>27</sup> This bill was in a great measure founded on the report of foregoing committee.<sup>28</sup> It passed the upper house without much discussion, but it went to the lower house late in the session.<sup>29</sup> The promoters of the bill thought it would meet with severe opposition from the powerful railway interests in that house.<sup>30</sup> Therefore, they did not push the

<sup>23</sup> Hansard, 173: 1317.

<sup>24</sup> *Ibid.*, 175: 697.

<sup>25</sup> Report of Lords' Committee, 1864, p. 111.

<sup>26</sup> *Ibid.*

<sup>27</sup> Hansard, 180: 848.

<sup>28</sup> Hansard, 184: 1704.

<sup>29</sup> *Ibid.*, 180: 848.

<sup>30</sup> In 1864 there were no less than 153 railway directors (not to speak

measure vigorously. After being read a second time, it was "put off" for a fortnight, and nothing was done with it that year.<sup>31</sup>

At this time it must be remembered that there was much confusion over the legality of railway securities. Many companies were forced to declare their inability to observe accurately the limits of borrowing powers prescribed by the numerous acts of Parliament. The public also became aware that under the semblance of compliance with the limit prescribed by Parliament, money was borrowed every day beyond the authority given. Parliament itself was forced to recognize the unfortunate state of affairs.<sup>32</sup> It appeared timely to legislate on the matter, but it was thought impolitic to start too stringent rules so as to "make it safe for people to jump in the dark." As a compromise between the extreme views, the Marquess of Clanricarde revived the agitation of the previous year by proposing that every company should be compelled to make periodical returns and that Parliament should adopt some system of public registration so as to enable the people to judge for themselves.<sup>33</sup> In the meantime a bill<sup>34</sup> for the registration of railway debentures, which was substantially the same as that of the previous session, was introduced into the House of Commons.<sup>35</sup> This bill contained thirteen clauses and dealt in detail with the yearly returns to the registrar of joint stock companies, the appointment of assistant registrars by the Board of Trade, and the question of fees, and other questions. It also contained three schedules, of which the first was concerned with the reports on borrowing powers, the second with the registration of the issue of bonds and debentures and of certificates of debenture stock,

of engineers, bankers, or contractors) in the House of Commons, nearly one-fourth of the chief branch of the legislature being thoroughly identified with the railway interest in the country. Some of the railway directors, however, were not returned to Parliament for the purpose of representing the railway interest, others were solicited to become members of railway boards in consequence of their being members of Parliament. *Railway Times*, January 16, 1864.

<sup>31</sup> Hansard, 180: 848.

<sup>32</sup> *Ibid.*, 183: 869.

<sup>33</sup> Hansard, 183: 869.

<sup>34</sup> Bill No. 109, 1866.

<sup>35</sup> Hansard, 182: 1577; 181, pp. 336-338.

and the last with the registration of discharges of debentures and debenture stock.

In spite of the general need of some system of registration, however, the railway interests raised considerable objection to the provisions proposed by this bill.<sup>36</sup> In the first place, they claimed that such a system of compulsory registration would give to the registered securities an apparent validity which they did not have intrinsically, and that it was impossible for the proposed registrar in charge of the annual returns, etc., to ascertain whether bonds submitted to him were or were not issued within the borrowing powers of that company. But the railway interests, as remarked the Earl of Belmore, failed to notice that all the bill proposed to do was exactly what had been done for the preceding 150 years with regard to the registration of deeds in Ireland. All land deeds had to be registered in the Rolls Office in Dublin. This was exactly the proposition as regards the registration of railway securities, and it did not seem probable that the registration in the case of railway securities would give the debentures any more validity than it would convert a false deed in Ireland into a good one. The only object of the requirement was to show the numbers and amounts of the securities issued by each company so that the investors might be able to ascertain for themselves which securities stood in relative priority.

Another objection against this compulsory registration of railway securities was that this requirement would take away from the directors the feeling of responsibility, which they were then supposed to have. If the directors were divested of their duty of looking into the limits of their borrowing powers and were required by law to rely upon the findings of some government office in regard to the exercise of their borrowing powers, they might be induced to shirk the responsibility of keeping their loans within the limit. But this argument could not hold in the face of the fact that many railway directors themselves often did not know either the extent of their responsibility or the exact limit of their borrowing powers.

A general objection was also made on the ground that such registration would interfere with the proper conduct of the companies' business. Extra forces of men would have to be em-

<sup>36</sup> *Ibid.*, 181: 336-338.



ployed in order to prepare the required returns, and the regular business would be interfered with. But the supporters of the bill retorted that no one would deny that the required compulsory registration would mean some extra work for the railways, but that it must also be conceded that the increased value of their securities due to such registration would more than compensate them for any minor inconveniences which they would have to incur.

While this bill was progressing, the Government was also planning to bring in a bill to give effect to some of the recommendations of both of the select committees on railway borrowing powers.<sup>37</sup> Thus, in May 1866, a measure called the Railway Companies Securities Bill was introduced by the president of the Board of Trade into the House of Commons.<sup>38</sup> This bill differed from the Registration of Railway Debentures, etc., Bill in that while the former was based largely on the report of the Lords' Committee on railway borrowing powers of 1863, the latter embodied the recommendations of the committee of 1864.

Soon after the introduction of this measure, the Registration of Railway Debentures, etc., Bill was withdrawn<sup>39</sup> without any discussion. The government measure, after being examined and considered in committees and amended considerably, was adopted and has since been known as the Railway Companies Securities Act of 1866.<sup>40</sup> Its primary purpose was to amend the law relating to securities issued or to be issued by railway companies. The principal provisions may be summed up as follows: (1) Every railway company, on or before January 15, 1867, should register and keep registered at the office of the Joint Stock Companies the names of their secretary, accountant, treasurer, or chief cashier for the time being authorized to sign instruments under the act. (2) Within fourteen days after the end of each half year every railway company should make an account of their loan capital authorized to be raised and actually raised up to the end of that half year, specifying the particulars described in the schedules of the act. (3) The Board of Trade was authorized to prescribe, by notice in the *London Gazette*, the forms

<sup>37</sup> Hansard, 181: 338-339.

<sup>38</sup> *Ibid.*, 183: 1197.

<sup>39</sup> It was withdrawn on July 23, 1866. *Ibid.*, 184: 1279.

<sup>40</sup> 29 & 30 V. c. 108.

in which the half-yearly accounts were to be kept. Such accounts were to be open to the inspection of shareholders, etc., at all reasonable times, without charge. (4) Within twenty-one days of the end of each half year every railway company should deposit with the Registrar of Joint-Stock Companies a copy, certified and signed by the company's registered officers as a true copy, of their loan capital half-yearly account, and it should be unlawful for any railway company to borrow any money unless and until it had first deposited the aforesaid accounts. Failure to deposit such accounts or to register its proper officer should render the company liable to a fine not exceeding £20 for the initial offense and a penalty not exceeding £5 per day during the time which the offense continued. (5) Any person might inspect the documents kept by any registrar on the payment of one shilling for each inspection, and might have certified extracts furnished him on the payment of additional fees. It was further provided that thereafter two of the directors and the registered officers of each company should endorse on every debenture, "each for himself," as stated in the act, that, so far as he knew the debenture was issued duly and was within the prescribed limits to the borrowing powers. In case any mortgage deed or bond was delivered without such a declaration, the company should be liable to a penalty not exceeding £20 for every offense, and if any officer or director knowingly permitted the delivery of such mortgage, deed, etc., he should be personally liable to the same penalty as that of the company. Moreover, if any director or registered officer of a company signed any declaration, account, or statement required by the act, knowing the same to be false in any particular, he should be deemed guilty of an offense against the act and should be liable to a fine or imprisonment.

It may be noticed that all the provisions contained in the act had been, more or less, generally conceded as being necessary. Parliament did not adopt any of the more stringent measures, such as the compulsory stamping of each security by the government, etc., for fear that in trying to require too much at a time the whole program might be either defeated or made difficult of application. Most of the provisions, therefore, were passed without much opposition in either house of Parliament.

But of even greater importance were the provisions governing

the make-up of these returns as required by the act. No matter what efficient rules were adopted to enforce the making of returns, the system would be of little value if the returns themselves were inadequate. It may be remarked that two distinct things were required, namely: (1) half-yearly account of the loan capital of the company, and (2) a statement of the borrowing powers. The half-yearly accounts were required to show the acts of Parliament under the power of which the company had borrowed money, the amounts of loans authorized and the amounts raised by loans, besides other important accounting details;<sup>41</sup> while the statement of the borrowing powers should contain information concerning (1) the acts of Parliament conferring the borrowing powers and the conditions under which the powers may be exercised, (2) the amount of mortgage or bonded debt or debenture stock authorized, and (3) the date at which such conditions have been fulfilled.

This act proved disappointing to some, in that it failed to embody many of the more stringent measures demanded. Thus the *Economist* said:<sup>42</sup>

"English legislation abounds in abortive expedients. It shrinks from difficulties. There is very commonly an admitted evil, and very obviously only one real remedy. But very often that real remedy is painful, and if public attention is but half aroused to the subject, we are apt to put up with some half-measure which gives little or no trouble, which looks as if it might mend matters a little, and which has no disadvantage save that it is not a searching cure of the evil to be remedied, and that in a little while it will be forgotten on account of the slightness of its effect, while the malady itself will rage as much as ever."

"One of these half-way laws is the Act of last session as to railway securities."

This important financial paper contended that the precautions provided by this act failed exactly at the weak point. What was wanted was an independent audit, a warranty by a competent and impartial authority that such and such debentures were

<sup>41</sup> Cf. first schedule of the Railway Companies Securities Act, 1866. Cf. also *infra*, Chap. 7.

<sup>42</sup> *Economist*, October 27, 1866.

good. "The confusion, not to say worse, of the affairs of some railways has been so great that those connected with all of them are inevitably subject to a doubt. Half of the directors in disorganized railways do not know what is being done, and others wish to do what is illegal. Against such dangers, the act gives no security; it requires certain statements to be made which all the good companies, and 99 out of 100 . . . will make honestly, but which an exceptional company, or rather some few people about such a company, may make dishonestly. As long as you rely on the *bona fides* of the issuer of the debenture you are not, and cannot be, safe from his *mala fides*." <sup>43</sup>

The act seemed to have failed to check the confusion over debentures at least during the three or four years after its passage. Nor did it prevent some of the companies from exceeding their borrowing powers, as shown by the fact that a good number of railways continued their former practice and that neither the shareholders nor the public were at all aware of the liabilities to which the companies were subject.<sup>44</sup> Moreover, during 1867, the year after the act was passed, many railway properties became greatly depreciated and a feeling sprang up throughout the country that further reform was needed.<sup>45</sup> Thus Lord Redesdale felt it "extremely necessary" to adopt some provisions to the effect that railway securities, unless properly registered, should be regarded as invalid.<sup>46</sup>

In this connection it may be remarked that the apparent failure of the Railway Companies Securities Act during several years after its passage was perhaps due more largely to the special momentum of the established habit of the railway companies to over-borrow rather than the weakness of the act itself. When the state of railway borrowing had reached such a chaotic condition and the companies had become so used to exceeding the limit of their borrowing powers, as they were during the early sixties, it would take some time to make any signal improvement, no matter what measures were adopted. Therefore, the contemporary dissatisfaction and the apparent lack of good results from

<sup>43</sup> *Ibid.*

<sup>44</sup> Hansard, 190: 1962.

<sup>45</sup> *Ibid.*, 190: 1955.

<sup>46</sup> *Ibid.*, 190: 1962.



the act during the years immediately following its enactment do not necessarily prove that the act was ineffective. On the contrary, time seemed to have proven the act of great value in spite of its defects, in helping to restore order out of the financial chaos which existed during the fifties and sixties. An English writer,<sup>47</sup> after criticising the English system of regulation, gave much credit to this act as having done "a great deal towards placing railway finance on a sounder footing. . ."

After the enactment of the Railway Companies Securities Act, Parliament commenced to give its special attention to the adoption of some effective system of accounting as a possible method of regulating railway loan capital as well as other branches of railway finance. Accordingly special legislation for the purpose of regulating the borrowings of railways may be said to have closed with the passage of this act.

Now it may be asked, why did the railway companies exceed the limit of their borrowing powers? What was the reason that directors even risked their personal liability to issue illegal securities? It is true that some directors violated the law for indefensible reasons; but it is equally true that in some instances they were practically compelled to borrow beyond the legal limits. By reason of the restriction of loans to one-third of the share capital the companies were naturally always at the limit of their borrowing powers. Thus the directors were placed under an obligation at a certain time to meet a large amount of debts falling due, whatever might then be the state of the money market. Therefore, they often felt it necessary to raise money beforehand when the state of the money market was easy. Moreover, it often became necessary for a company to create new debts in anticipation of the falling due of the old debts so that its creditors or financial agents might not be able to take advantage of the occasion to embarrass the company. With its loans up to the limit, in issuing fresh debentures, the company in either case would exceed the statutory limit of its borrowing powers.<sup>48</sup>

In answer to the question as to why railway directors, especially of small lines, were willing to evade the law and assume the

<sup>47</sup> J. S. Jeans, *Railway Problems*, p. 23.

<sup>48</sup> Cf. *Economist*, May 2, 1863, and Hansard, 181: 338.

risk of personal liability, the *Economist* said,<sup>49</sup> "But human nature is vain and weak, and the directors are puffed up by the little local importance, and flattered by secretaries who live by the line, and engineers and attorneys who make a large profit out of it, and so they yield and ruin themselves."

Some people felt that the limit of the borrowing powers, which was only one-third of the share capital, was "utterly inadequate,"<sup>50</sup> that the limit was too small compared with the general practice of borrowing on other mortgages,<sup>51</sup> and that too strict rules would invite their evasion. Indeed, it was contended that this inadequacy of borrowing powers was responsible for the gross violation of the limit.

Others felt<sup>52</sup> that it was not within the power of the legislature to put any effective restrictions upon the borrowing powers of railway companies, even if it were proper to do so. If a company wanted to borrow, it would find some way of doing it in spite of the law. Therefore, it was urged that the limit upon borrowing powers should be removed<sup>53</sup> and railways should be allowed to borrow what they liked, provided that they made known all their proceedings. If the public had the necessary information, they might be safely given absolute freedom in advancing their money.<sup>54</sup> If the limit was not entirely done away with, it should at least be extended.

Further it was urged that the borrowing powers of railway companies should be made more definite and the law governing the same should be more strictly enforced. If the railway directors realized that there were absolute limits to their borrowing which it was not possible to evade, they would make better arrangements beforehand, and would not be so speculative. Indeed much of the difficulty was attributed to the facility with

<sup>49</sup> *Economist*, December 14, 1867.

<sup>50</sup> Evidence before Lords' Committee, 1864, p. 34.

<sup>51</sup> The ordinary margin of borrowing with reference to good mortgage securities was two-thirds of the share capital. See evidence before Lords' Committee, 1864, pp. 34-35.

<sup>52</sup> Evidence before Lords' Committee on Railway Borrowing Powers, 1864, p. 24.

<sup>53</sup> Evidence before Royal Commission on Railways, 1867, pp. 803-806.

<sup>54</sup> Evidence before Lords' Committee on Railway Borrowing Powers, 1864, pp. 33-35.

which railway directors in general were able to get their wrongs set right by the assistance of Parliament in patching up their former acts. Although they did not always succeed in getting what they asked for, the hope of being able to do it operated strongly upon them.<sup>55</sup> Parliament in its desire to protect debenture holders by limiting the borrowing powers had led the public to believe in the thoroughness of the protection; while in reality their protection was by no means satisfactory so long as the law was indefinite and loosely enforced.<sup>56</sup> Therefore, it was urged that the limit of the borrowing powers of railway companies should be made more definite and strictly enforced, or that there should be none at all.

Another defect in the law prior to 1866 was that there was not any effectual means to ascertain whether or not the law had been complied with. The law said that railways should not issue any debentures unless and until a certain proportion of their capital had been paid up, but it left the enforcement of this provision to a justice of the peace. It limited the amount that the railway could borrow but in practice could not enforce the limitation. The whole trouble seemed to be briefly this: The legislature had given a privilege of borrowing and had defined the extent of the privilege as well as the conditions under which the privilege might be exercised; but under the circumstances which existed during the sixties no one had any adequate means of ascertaining whether or not the limit had been exceeded or the requisite conditions had been fulfilled.<sup>57</sup> Therefore, it was recognized that the difficulty was a legal one and not an economic one, in that the earning powers of the railways, on the whole, were such as to make a mortgage on railway undertakings "one of the very best securities."<sup>58</sup> Toward removing this difficulty, the agitation as well as the laws adopted during the sixties for the registration of railway securities seem to have done much.

<sup>55</sup> Evidence before Lords' Committee on Railway Borrowing Powers, 1864, p. 27.

<sup>56</sup> Evidence before Lords' Committee, 1864, p. 33.

<sup>57</sup> *Economist*, May 2, 1863. Cf. also Hansard, 171: 1303.

<sup>58</sup> *Economist*, October 20, 1866.

## CHAPTER VI

### REGULATION OF RAILWAY STOCK WATERING

Stock watering by railways may be defined as the nominal increase of railway capital without any commensurate investment of real capital in the concern. It amounts to the fictitious increasing of the capital liabilities by mere book entries and the issuing of unpaid certificates. Stock watering has several forms, chief among which may be mentioned (1) stocks issued partially to represent money, which, instead of being used for improving the property is paid out as dividend; (2) stocks issued to represent an actual increase in the earning capacity and market value of the property; and (3) stocks issued to give certain parties control of the line without actually risking anything like the amount nominally represented by their stocks.<sup>1</sup> Stock watering may be done in many ways, the most important, as it is practiced in England, are those of mere duplication or triplication of existing stocks or the creation of new but unpaid stocks.

Stock watering under the first form came up before Parliament in 1868, in connection with the Regulation of Railways Bill of that year. The Duke of Richmond proposed the insertion of a clause in that Bill to enable railway companies to issue preference shares which had been authorized and remained unissued at the time, in lieu of dividends, in cases where by a vote of no less than three-fourths of the holders of ordinary shares any portion of the amount declared by the auditors to be applicable to the payment of dividends on the ordinary shares is applied to the redemption of debentures or to the execution of authorized works. This proposition was objected to on the ground that it would enable a company to apply its earnings to the construction of new works or the redemption of debenture without paying anything to the preference shareholders.<sup>2</sup>

<sup>1</sup> Hadley, *Railroad Transportation*, 1903, pp. 54-55.

<sup>2</sup> *Railway Times*, May 23, 1868, p. 548.



This objection, *per se*, did not appear valid, for the dividend on the ordinary stock was distributable only after the claims of the preference shareholders had been satisfied. Since the dividend on the ordinary shares of a company was duly earned, as it was required to be in this case, there was no reason why that company, with the consent of the holders of its ordinary shares, should not be permitted to issue its existing preference shares in lieu of such dividends. Indeed, as the *Railway Times*<sup>3</sup> maintained, it appeared strange that the shareholders could not, on their own accord obtain the privilege of paying themselves "in paper instead of in cash." The difficulty appeared to be that Parliament feared the proposal would prove "extremely unjust and that it would probably lead to gross mismanagement, though it would not be open to so much objection if the payment were made in ordinary instead of in preference stock." Some prominent members in the House of Lords<sup>4</sup> contended that "if Parliament could have foreseen the evil which had resulted from the issue of preference stock," it would have never given its sanction to these preference shares. The difference of opinion with regard to this proposition of issuing preference shares in lieu of dividends appeared to be so strong that the bill was withdrawn.<sup>5</sup>

Thus direct stock watering in England has been practiced only under the various shades of the second form. The first form, as has just been shown, failed to receive the sanction of law; and the last form, which is by far the most objectionable, has proved impracticable under the English system of regulation and the conservative business sentiment of the people.

But stock watering has been practiced indirectly, although on a small scale, ever since the thirties. One of these early methods of indirect stock watering was to pay interest on calls before a line was opened, and then charge such unearned interest to capital. This practice became quite common during the forties.<sup>6</sup> From its appearance it was quite harmless, but in reality it was nothing but a pure case of stock watering, in that such charges of unearned interest would swell the capital account to the extent

<sup>3</sup> *Railway Times*, May 23, 1868.

<sup>4</sup> Lord Redesdale *et al.*, Hansard, 192: 420-422.

<sup>5</sup> Hansard, 192: 422.

<sup>6</sup> *Railway Times*, April 27, 1844.

of the interest so charged, without any corresponding addition to capital. Although the magnitude of these nominal additions was small, the effect became rather objectionable. So in 1847, after the panic which followed the great railway extension, the House of Lords adopted a standing order<sup>7</sup> prohibiting the payment of interest out of capital. This was done, however, not primarily for the purpose of preventing stock watering, but to discourage speculation.<sup>8</sup> Nevertheless, this standing order had considerable effect upon stock watering, and remained in force for many years.

This restriction was again emphasized in 1864 in connection with the loans made by the railway companies. In the Railways Construction Facilities Act of that year a provision was made to the effect that railway companies should not, out of money raised under the certificate of the Board of Trade by calls or borrowing, pay interest or dividend to a shareholder on the amount of calls made on his shares.<sup>9</sup>

For twenty years these restrictions remained in force. Practically nothing was done during that period to change them. But in 1882 on behalf of the small undertakings, which were in demand at that time, an effort was made to obtain from Parliament a modification of these restrictions. The reason advanced was that the payment of interest out of capital would offer a great inducement to local investors and small capitalists, who could not afford to put their money into these undertakings without obtaining at once some returns upon it. While the effort was unsuccessful, it brought about considerable agitation, as a result of which the House of Lords in 1886 modified its standing order so as to make the payment of interest out of capital permissible under certain conditions.<sup>10</sup> This relaxation of the law, however, was not accompanied with such good results as was expected. It soon proved that it was the bright prospects of the undertaking and not the power of the company to pay interest out of capital that could induce investors to come forward. So this relaxation of the indirect check against stock watering

<sup>7</sup> Standing Order No. 167.

<sup>8</sup> *Report of Select Committee*, May 19, 1882, p. iii.

<sup>9</sup> 27 & 28 V. c. 121, sub-sec. 3 of section 29.

<sup>10</sup> According to Earl Beauchamp in House of Lords, *Railway Times*, March 16, 1889.

proved to be ill-advised. Since then, however, special provisions have been made to restrict the payment of interest out of capital. Thus the Coventry Railway Act of 1910 provided that no interest should be paid on any share until at least two-thirds of the authorized share capital had been accepted by *bona fide* shareholders, nor should interest accrue in favor of any shareholder when calls on any of his shares were in arrears. The aggregate amount to be paid for interest was also limited to a definite sum, and the company was required to give notice of its power to pay such interest in every one of its prospectuses, advertisements, or other documents inviting subscriptions, so that investors might know what might take place. Moreover, the borrowing powers of the company should be reduced to the extent of one-third of the amount paid for interest, and the half-yearly accounts were required to show the amount of capital on which, and the rate at which, interest had been paid.<sup>11</sup>

Another indirect method of stock watering was to declare unearned dividends. This practice was quite as extensive as the payment of interest out of capital. A member of Parliament<sup>12</sup> was reported to have said that many railways paid dividends out of their capital stock as if they were in a most flourishing condition; and that they sometimes carried the practice so far that their capital no longer existed. This practice once became quite alarming; and the House of Commons felt itself compelled to insert a clause in the Companies Clauses Act of 1845<sup>13</sup> to the effect that companies should not declare any dividend whereby their capital stock would be in any degree reduced. By the Companies Act of 1862, it was also provided in Table A that no dividends should be paid except out of profits earned. But this regulation was not compulsory on the companies registered under that act, for they were empowered by sec. 14 to make rules of association excluding the regulation in Table A. Much conflict consequently resulted between the application of this act and the enforcement of Standing Order No. 167.<sup>14</sup>

But some railways soon found another method of adding water to their capital by the issuing of stocks at a discount. They is-

<sup>11</sup> Sec. 41 of the Coventry Railway Bill, 1910.

<sup>12</sup> Lord G. Somerset. *Hansard*, 78: 48-49.

<sup>13</sup> 8 V. c. 16, sec. 121.

<sup>14</sup> *Report of Select Committee*, 1882, p. iii.

sued stock certificates for sums larger than were paid into the treasury of the company. This practice also became obnoxious, as a result of which a clause was inserted in the Companies' Clauses Act of 1863,<sup>15</sup> prohibiting the issue of any shares for less than the full amount.

This law lasted three years. Owing to the agitation of the railway interests as well as the changeableness of the attitude of Parliament in railway matters during the period, the law was amended by the Railway Companies Act of 1867,<sup>16</sup> and the provision prohibiting the issue of shares at a discount was eliminated.

There was no debate upon the amendment in the public bill. But the question regarding railways was debated in connection with the proposal made in the Brighton Railway Bill.<sup>17</sup> This company (the Brighton Railway Company) being very much in want of funds proposed to raise money by the issue of preference stocks; but being unable to raise the amount required by such means, they sought to issue ordinary stocks at a discount. The proposal was regarded by the lords as "perfectly new" and of great importance. Lord Redesdale, who recommended the passage of the bill, confessed that it was an objectionable course, but he thought that "it was less objectionable than the creation of preference stocks, and he therefore felt disposed, under the circumstances, to allow the company to issue stocks at a discount." None of the lords who spoke on the question were certain as to the advisability of such a measure; but with the feeling that "when a railway company was in difficulty it was the interest of all parties that money to carry it through should be raised in some way," they did not oppose the measure openly. Following the example of the Brighton, four other companies also obtained similar powers, and £4,043,000 in "water" was added in that year to the railway capital by the issue of stocks at a discount.<sup>18</sup>

By the amendment of 1867 and the interpretations given to that amendment in the cases just cited, it was generally consid-

<sup>15</sup> 26 & 27 V. c. 118, sec. 21.

<sup>16</sup> 30 & 31 V. c. 127, sec. 27.

<sup>17</sup> Hansard, 188: 1423-1424 (July, 1867).

<sup>18</sup> The Chatham & Dover, the Great Eastern, the Sheffield, and the Metropolitan. Fraser, *British Railways*, p. 54.



ered that the issue of shares at a discount was permitted. This freedom was made more unmistakable in 1869 by the Companies Clauses Act of that year,<sup>19</sup> in which it was provided that the repeal of the proviso against the issuing of stocks at a discount was made applicable generally to all companies coming under that act. Thus all restrictions were removed. The railways at once made use of this relaxation of the law; and the issuing of stocks at a discount soon became quite general.<sup>20</sup>

Although these discounts were *ipso facto* nominal additions, they were comparatively negligible in amount and were done only indirectly. Open stock watering was still under the ban of law. There appeared, however, to be much latitude in enforcing the law governing such nominal additions. Since 1867 many railway companies have obtained powers to "convert" their stocks, by which process considerable nominal additions were made. But in most of these cases the "infusion," as it was then called, was still small compared with the capital of the companies, and was made more or less incidental to other arrangements. Out and out stock watering by duplication did not take place until 1888,<sup>21</sup> when a new departure took place under the scheme known as stock splitting. In that year the North British Railway was authorized to make an "absolute duplication" of its existing stock of £5,181,000. By this so-called process of duplication, every holder of the company's ordinary stock on which, say, £100 had been paid, was given a certificate for £200 in the converted stock. In the same year the Great Northern made a nominal addition of £1,803,000, and in the following year the Taff Vale obtained powers to increase its ordinary capital of £1,300,000 two and a half times by the same process. The latter case led Parliament to make its first inquiry into stock watering. We shall, therefore, examine it briefly.

When the bill of the Taff Vale for triplicating the amount of

<sup>19</sup> 32 & 33 V. c. 48, sec. 5.

<sup>20</sup> Evidence before the Select Committee of 1890 on the Conversion of Railway Stocks, p. 39.

<sup>21</sup> Prior to 1890 complete information regarding the amount of nominal addition was not obtained by the Board of Trade, but the Board of Trade's returns of 1890 show a total of £57,800,000. Deducting from this the sum of about £21,000,000 added in 1888, 1889 and 1890, the amount of nominal capital existing prior to 1888 would be about £37,000,000.

its ordinary shares was lodged in Parliament, it aroused considerable anxiety. Therefore, in spite of the fact that it was not the duty of the Board of Trade to examine questions dealing with capital in railway bills, the matter was brought informally to the notice of that board for consideration. The view which that board took on the question was that the proposed nominal increase was so extensive that it ought to be dealt with in a public manner, and should not be allowed to pass as a matter of course; notwithstanding their general opinion that the "greatest freedom should be permitted to companies to arrange their capital as they pleased." Eventually the bill was passed and ample powers of duplication were granted to the company, subject to the provision that surplus profits above 15 per cent on the ordinary capital, or 6 per cent on the new enlarged capital, should be given to the public in the form of reduced rates or improved accommodations. It was also provided that the nature of the nominal increase as well as the old capital should be shown in the accounts of the company, so that every one should be able to understand what had happened.<sup>22</sup>

Leaving the advisability or inadvisability of granting powers for stock watering, for future consideration, we may here mention the erroneous idea which Parliament had in regard to railway finance as evidenced by the proviso under which the extensive powers of duplication were granted to the Taff Vale. Although the high level of the maximum rate of dividend fixed to "balance" the favors granted might have been warrantable at the time by the special circumstances of that company, the method of limiting the maximum was altogether misleading and ineffective. According to that method any surplus above 15 per cent etc. was to be given to the public in the form of reduced rates. It was fairly well recognized then, as it has been generally recognized since, that a railway company under restriction as to the maximum rate of dividend would be constantly tempted to increase its expenditures, whenever its profit promised to exceed that limit.<sup>23</sup> There are always many ways in which a railway company can spend money before it will give it to the

<sup>22</sup> Evidence before the Select Committee of 1890.

<sup>23</sup> "To forbid a corporation to increase its profits is to encourage waste and discourage enterprise." Hadley, *Railroad Transportation*, 1903, p. 102.

public. This was especially true during that period when the system of accounts was ineffective to check up the expense charges of the company.

Then again, the proviso was based on a false premise. The maximum was fixed at 15 per cent only because the company had been declaring an average dividend at that rate during the previous seven years. From this it would follow that a company which might have gone on the principle of charging high or discriminating rates and had thus been enabled to pay high dividends would have its maximum fixed at a high point, whereas a company that had been content with moderate rates would be punished for its moderation by having its maximum fixed at a low level.<sup>24</sup> It is needless to say that such a practice would mean **gross injustice**.

To the public such a principle would also be unfair. One district would be given a right to receive all profits above say 5 per cent of dividend of the railways serving it, while another district would not be entitled to enjoy such a right until the dividends of its railways had reached say 10 or 15 per cent. But the question of rates is not within the scope of our study. Suffice it to say that strange as it appeared to others,<sup>25</sup> Parliament at the time thought it had gained a great concession from the railway by the provision mentioned and referred to it in subsequent years as a principle to be followed instead of regarding it as a bad practice to be avoided.

The case of the Taff Vale, significant as it appeared to be, was nevertheless only the prelude to what took place immediately afterwards. It was in 1890 that stock watering reached an extravagant scope, and it was in that year when the most important parliamentary inquiry regarding stock watering was made. In 1890 four companies<sup>26</sup> lodged bills for powers to add

<sup>24</sup> "The market value (of railway stocks) depends upon the rate which has been charged. . ." *Interstate Commerce Commission Report*, Feb. 22, 1911, p. 259.

<sup>25</sup> *Economist*, March 22, 1890, pp. 364-365.

<sup>26</sup> The Isle of Wight, the London & South-Western, the Caledonian, and the Great Northern. The London & South-Western may be taken as a simple and typical example of stock duplication. In the second clause of this company's bill it was provided that the company would create ordinary stock of two classes — (1) preferred 4 per cent ordinary stock and (2) de-

some £36,000,000 nominally to their capital, and those bills were not opposed.<sup>27</sup> The vast interest involved in these proposals at once attracted much attention. The Board of Trade in spite of its policy to favor non-intervention in such matters, thought the question of such an extensive increase of nominal capital to be of "novel impression" and a "new departure so important that it ought not to be passed *sub silentio* . . .," so it urged that the question should be fully debated and the whole matter thrashed out. The chairman of the Ways and Means Committee, under whose hands such unopposed bills were usually disposed of without much discussion, also considered that the vast interests involved in them required special investigation. He disregarded, therefore, the usual rule of procedure, and handled those bills as if they were opposed. Accordingly they were referred to a select committee of nine members, five being nominated by the House of Commons and four by the Committee of Selection.<sup>28</sup> This select committee was empowered to send for persons, papers, and records, etc., concerning both sides of the question, and to consider what provisions should be made for the benefit of the public, if the applications were allowed.<sup>29</sup>

Two distinct questions at once presented themselves for solution, namely:

(1) Whether or not the proposed duplication of stocks ought to receive sanction.

(2) How far it was necessary or expedient for Parliament to interfere with the methods by which the duplication was done, and if Parliament should so interfere, whether the terms and

ferred duplicated ordinary stock, both classes of which to be in substitution of a corresponding amount of the paid up ordinary deferred. That is to say, £100 of the preferred and £100 of the existing ordinary stock should be substituted for every £100 of the existing ordinary stock. It was also provided that the maximum dividend on the preferred stock should be at the rate of 4 per cent non-cumulative, and that the remainder of the net profits would go to the deferred ordinary stock. The voting powers were to remain as before, as if the splitting or duplicating had not taken place. (*Cf. Railway Times*, May 17, 1890, and testimony of the representative of the L. & S. W. before the Select Committee of that year.

<sup>27</sup> *Railway Times*, March 22, 1890, and June 21, 1890, p. 784.

<sup>28</sup> Select Committee of the House of Commons on Stock Conversion, 1890, hereafter called Select Committee of 1890.

<sup>29</sup> *Report of Select Committee*, 1890, p. ii.



conditions under which duplication might be done should be prescribed in a general enabling bill.

With these questions before it, the committee, besides taking testimony from the representatives of the railways and other interested parties, called for much independent evidence, among which was that of the representatives of the Board of Trade, the Stock Exchange Committee, and of prominent members of the London and Scottish banking fraternity. A remarkable phalanx of opinion was obtained.

One very striking feature of the evidence on the question of stock watering was that not one of the witnesses thought the practice good in itself. Even those who appeared in behalf of the railways did not attempt to justify it on its own merits. On the other hand, all the witnesses agreed that in principle stock watering should be avoided. But the railway representatives claimed that if the practice were an evil, it was a necessary one, since if they did not do it themselves, the conversion companies<sup>30</sup> were going to do it for them.

The second question upon which much discussion took place was how to ameliorate this necessary evil. What was elicited upon this question was enlightening. The Board of Trade<sup>31</sup> was of the opinion that if the freedom of stock watering were to be generally conceded, it was most important that they should retain a record of the actually paid-up capital as distinguished from the nominal addition. The position of the board was to leave railway shareholders to duplicate, triplicate, or to give any name or units to their capital, for the purpose of buying and selling, that suited them best, "but," they said, "let us take care of the public interest so far as the record is concerned." The

<sup>30</sup> The first stock conversion company was floated in February, 1889. The object of the company, which was new at the time, was to effect the duplication or triplication of the stocks of railway companies independent of the railways themselves. The conversion company, or trust, used its own capital for the purchase of railway stocks, and also gave its own shares and debentures in exchange for any railway stocks that might be deposited with it. Thus, it obtained a considerable amount of railway stock, which in turn was made the basis of a very much larger issue of the trust's own shares and bonds. For details of the working of the conversion company see *Economist*, 1889, p. 596.

<sup>31</sup> For details of the position of the Board of Trade see *Evidence before the Lords' Committee on the Conversion of Stock*, 1890, pp. 37-44.

Board of Trade was also of the opinion that there should be uniformity in recording these nominal additions. If no special act like that of 1868 were enacted, a uniform clause requiring such records should be inserted "as far as possible" in all private bills asking for powers to make nominal additions. It also proposed under the powers of obtaining statistical information conferred by the Railway and Canal Traffic Act of 1888<sup>32</sup> to obtain and record the same information in the annual returns under the Regulation of Railways Act of 1871.<sup>33</sup> Attention must be called to the fact that the purpose of the Board of Trade in insisting upon the keeping of a clear record of the original paid-up and the nominal capital was "mainly in the interest of the government and the public with reference to the powers with which the companies have been entrusted, and not for the purpose of benefiting or shielding the investing classes in any way."<sup>34</sup>

Whatever the purposes were, all the evidence agreed on the necessity of keeping a clear record of all nominal additions. A practical banker<sup>35</sup> in testifying, believed that to keep a separate record of such nominal additions was very important not only to the railway companies themselves but to the general investors as well. The chairman of the stock exchange<sup>36</sup> considered it very important that the government should insist upon having the original capital placed on the face of the accounts, so that there should be no doubt as to what was the real paid-up capital. By this means, "every person who buys or sells these shares will always have before him every six months what his position is." In short, the consensus of opinion both in Parliament as well as outside of it was that a clear, separate record of the conversion and the converted stocks was necessary for the general interest of the railways and the public. It is interesting to notice that no objection whatever against this requirement was raised by the railways.

The select committee, after examining those witnesses representing different interests, made a special report three months

<sup>32</sup> 52 & 53 V. c. 66, sec. 32.

<sup>33</sup> 34 & 35 V. c. 78.

<sup>34</sup> *Evidence before the Lords' Committee on the Conversion of Stock*, 1890, p. 43.

<sup>35</sup> *Ibid.*, pp. 53-56.

<sup>36</sup> *Ibid.*, p. 47.

after its appointment. As above stated, the committee had to decide two distinct questions: (1) whether the proposed nominal additions ought to receive the sanction of Parliament, and (2) how far it was expedient for Parliament to interfere with the process by which the nominal additions were to be effected. In answer to the first question, the committee said that there was "nothing unreasonable or objectionable from a public point of view in the conversion of ordinary stocks into a preferred and a deferred class," and, therefore, it recommended "that the necessary power for that purpose should not be refused when a railway company desires it." With regard to the second question, which was of general interest, the committee instead of trying to solve it as it was expected, dodged it by throwing the responsibility upon the Royal Commission of 1867 which stated "that Parliament should relieve itself from all interference with the financial affairs of railway companies, leaving such matters to be dealt with under the Joint Stock Companies Act . . ." and the committee urged "that Parliament should continue to act upon the principle of non-intervention . . . believing that while the public are naturally concerned in the solidity and stability of corporations to which Parliament has given large exclusive powers, these objects are, in most cases, best secured by trusting to the self-interest of the shareholders."<sup>37</sup> In order to avoid the confusion inherent in these nominal additions, the committee believed "it right to insist (1) that the dividend should in all cases continue to be declared on the original stock, and (2) that the original stock or paid-up capital shall be recorded and shown in the accounts as though no alteration had been made, . . ." and (3) that the new stock should bear a different and uniform nomenclature.

This report proved, as might have been expected, disappointing to many parties,<sup>38</sup> but not to the railway companies. Throughout its length it showed that the committee took for granted the very matters into which it had been expected to inquire. Most of its conclusions were drawn from the fact that some commission said so and so; and much of the evidence

<sup>37</sup> *Report*, pp. IV-V.

<sup>38</sup> Both the *Economist* and the *Railway Times* published editorials strongly criticising the report.

seemed to have been disregarded. In the first place, the conclusion of the committee that "there was nothing unreasonable or objectionable from a public point of view in the conversion of ordinary stocks . . ." did not seem to be well founded. In the face of the numerous objectionable features of stock watering brought out by the evidence, no one could have expected such a conclusion.

Then the statement made by the committee that the established principle was that Parliament should not concern itself any more with the financial affairs of railways than with those of other stock companies was open to serious question. Parliament had never assented to this principle. On the contrary it had never permitted railway companies to deal with their capital accounts with the same degree of freedom as the ordinary joint stock companies. Numerous facts<sup>39</sup> could be cited to show that Parliament had drawn a clear and broad line of demarcation between the principles governing the finances of railway companies which enjoyed a state conferred monopoly and that of ordinary industrial undertakings. "To assume, therefore, that Parliament had acted on the principle of non-intervention in the financial affairs of railway companies seemed to be directly opposed to facts."<sup>40</sup> Whether the principle involved in stock watering was right or wrong, it was certainly not to be summarily disposed of by quoting a twenty-year old opinion which Parliament did not endorse at the time and which in its subsequent actions it had often deliberately set aside.

It must not be inferred from these disappointing features that the inquiry of the committee was entirely fruitless. At least two of the recommendations of the committee have since proved to be sound. The first was that regarding the keeping of a clear record of all nominal additions and the other was that of requiring a uniform and distinct nomenclature to be put on the face of the "watered" stocks. It is to be regretted, however, that sound as these recommendations were, they were shorn of much of their

<sup>39</sup> Parliament has put railway finance upon a different footing from that of other companies by specially authorizing trustees to invest in certain classes of railway stocks. It has reserved to itself the power to deal with the affairs of an insolvent railway; and it has intervened to limit railway dividends, etc.

<sup>40</sup> *Economist*, June 21, 1890.



force and value by the lack of emphasis placed upon their enforcement.

This report was received by Parliament on June 13, 1890. No general or special legislation resulted from the inquiry. But clauses embodying the recommendations of the committee to require the recording of all nominal additions were introduced into the bills then under consideration.<sup>41</sup> Moreover, a precedent was established, according to which similar clauses have continued to be inserted in all subsequent bills for powers to make nominal additions to railway stock. Parliament also occasionally required that dividends be paid on the original ordinary shares, exclusive of the nominal additions, as in the case of the Midland, where it was provided that the "company shall, notwithstanding the conversion, . . . continue to ascertain and declare their dividends on the amount of ordinary stock which would have been entitled to dividend if no such conversion had taken place. . . ."<sup>42</sup>

Parliament, however, failed to make use of the committee's recommendation of adopting some distinct nomenclature for the converted stocks. Neither was any uniform method of procedure adopted to compel all railway companies to report their nominal additions to stock. An indirect but more effective check against stock watering, however, was adopted in the following year, by the enactment of the Stamp Act in which it was provided that in case of any nominal increases of the share capital, an *ad valorem* duty of 2 shillings per £100 should be charged, with a cumulative penalty for neglect to render due statement of such increases. This measure has been rigorously enforced. Thus the railway companies have been compelled under penalty to pay duty on, as well as to render due statements of, all nominal increases to a government office. It may be added that a further check against unnecessary stock watering was effected by a subsequent enactment in which the stamp duty was increased from 2 to 5 per cent.

In this way, the question of stock watering was disposed of, and the policy for its regulation settled once for all. No new

<sup>41</sup> *Railway Times*, June 14, 1890.

<sup>42</sup> Sec. 67 of the Midland Act of 1897, quoted in Fraser, *British Railways*, p. 68.

departure from the policy has since been made by Parliament. The status thus established may be summed up as follows:

(1) Railway companies shall have freedom to determine their policies and practice in making nominal additions to their capital.

(2) Before such nominal additions are made, the company must come to Parliament for power.

(3) Bills for such powers are dealt with in the same way as any other kind of private bill.

(4) Clauses requiring the keeping of a clear record of all nominal additions as distinguished from the paid-up capital are uniformly inserted in such bills before their passage.

(5) An *ad valorem* duty of 5 per cent is to be paid on the nominal increases and a due statement of all nominal additions is to be furnished to the Stamp Duty Commissioners' office.

By this system of regulation, complete liberty has been given to the companies on the one hand, and publicity has been insured to the public on the other. Although England had to suffer from her leniency toward stock watering, she has never known those vicious schemes of stock watering practiced in the United States. Thus, disappointing as the 1890 investigation and imperfect as the action of Parliament appeared to be, much good was brought about, which was, perhaps, due both to the efficacy of the English system of regulation as well as the readiness of the English railways to mitigate as far as possible the evils inherent in stock watering.

Following the suggestion of the Select Committee of 1890, the Board of Trade in preparing its railway returns for 1890 also endeavored to find some way to give practical effect to the recommendations in regard to the records to be kept. On account of the lack of definite power, the Board of Trade, however, had to request the companies to show in their semi-annual returns the amount by which the various descriptions of their stocks and shares had been nominally increased or decreased.<sup>43</sup> But the "request" of the Board of Trade, though not as effective as a command might have been, proved quite useful, and considerable information regarding nominal additions was obtained from the companies which had added "water" to their capital. These

<sup>43</sup> *General Report to Board of Trade on shares, etc., 1890, p. 4.*

figures of nominal capital have since been published by the Board of Trade from year to year,<sup>44</sup> to the advantage of the public as well as to the railways themselves. By turning to these returns one may at once see for himself what part of the company's capital represents nominal increases, which information is an advantage in itself as well as a means to clarify confusion and, in a measure, to prevent speculation in stocks.

But, as remarked before, the policy of freedom in stock watering in England was established; and the aforesaid indirect checks against this practice were not felt seriously in some cases. The significance of this policy may be seen from the following table which exhibits the development of stock watering in England from the time when its first record appeared in the Board of Trade returns.

NOMINAL CAPITAL, 1890-1907.<sup>45</sup>

Year	Shares and Stocks Million pounds	Debentures Million pounds	Total	Proportion to paid up capital Per cent	Nominal Increase during year Million pounds	Real Increase during year Million pounds
1890	49.3	8.5	57.8	6.4	6.0	14.9
1891			64.1	7.0	7.0	14.8
1892	53.7	15.0	68.1	7.2	4.0	20.9
1893	53.7	24.4	78.1	8.0	10.0	17.0
1894	54.2	26.8	81.0	8.2	3.0	11.1
1895	56.7	31.8	88.5	8.8	7.5	8.2
1896	68.9	37.4	106.3	10.1	17.8	10.6
1897	114.5	38.0	152.5	14.0	46.2	14.1
1898	139.8	43.7	183.5	16.1	31.0	13.7
1899	141.0	43.8	184.8	16.0	1.3	16.5
1900	142.7	44.2	186.9	16.0	2.1	21.6
1901	143.7	43.7	187.4	15.8	.5	19.0
1902	145.7	43.7	189.4	15.7	2.0	19.4
1903	147.5	43.7	191.2	15.6	1.8	16.8
1904	149.2	44.3	193.5	15.4	2.3	20.5
1905	150.0	44.3	194.3	15.4	.8	13.5
1906	151.0	44.3	195.3	15.2	1.0	13.3
1907	151.5	44.4	195.9	15.0	.6	6.6

<sup>44</sup> In the Board of Trade Annual Returns showing the authorized and paid up share and loan capital of the railway companies, the amounts by

<sup>45</sup> The figures in the table are obtained from the annual Railway returns

From this table, it may be seen that at the time when the parliamentary inquiry was made, £57,800,000 <sup>46</sup> or about six per cent of the total paid-up railway capital in the United Kingdom represented nominal additions. This equaled about £3,000 per mile of line opened. The effect of the attitude of Parliament and the Select Committee of 1890 may be seen from what happened during the subsequent eight years, when an average of £16,000,000 in "water" was added annually. In 1895 the nominal addition made was as large as the real increase in capital; in 1896 it was about twice as much and in 1897 it reached the enormous proportion of £46,200,000 which was more than three times as much as the increase of real capital made during that year. This shows how extensively stock watering was practiced during that period. On account of the encouragement given by the findings of the Select Committee of 1890 the railways appeared to have thought that there was a "gold mine" in stock watering, and plunged into its depth. Thus by a stroke of the pen, so to speak, the amount of the stocks of a number of companies was doubled or trebled, without adding anything materially to their properties. The significance of such extensive and violent manipulations can hardly be overestimated. When over 16 per cent of the paid-up capital represents "water," and

which the capital of each railway company has been nominally increased by the conversion, consolidation, and division of their stocks, are shown with figures in italics under the figures of the total capital of each company. There is also a separate table showing, in abstract, the nominal increases of each individual company as well as the whole system. The returns, however, contain no information as to the difference between the nominal amount and the amount actually received of the stocks which have been issued at a premium or at a discount.

of the Board of Trade and the percentages are calculated with a slide-rule. They represent the United Kingdom, but the amount for England and Wales is about 75-80 per cent in almost every case.

The nominal increases due to discount on issue, payment of dividends out of capital stock, are not included in the figures of column of "Nominal increase during year."

<sup>46</sup> Of this amount, £6,000,000 was due to the conversions made by the Midland which has been by far the most important company in stock watering. This company has about £41,000,000 of its nominal capital representing water.



when nominal additions made in a year become three times as big as the increase of real capital, we have something that is at once important. It becomes hard to agree with the Select Committee of 1890 that such stock manipulations as these made no difference whatever to the public.

Another peculiar feature of the English practice of stock watering is that "water" is added not only to the shares and stocks but to the debenture debts as well,<sup>47</sup> and that the nominal additions to these debts, as shown in the preceding table, represent a considerable proportion of the total amount of "water."

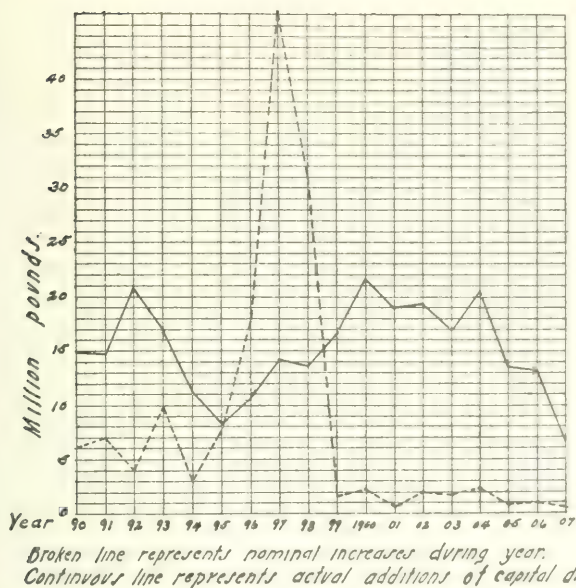
But stock watering reached its zenith in 1897, and its decline has been more striking than its growth. In 1898 the annual increase declined to £31,000,000, and in the following year, it dwindled to the insignificant figure of a little over a million pounds. Ever since that time the annual increase has never been more than £2,300,000, and the practice has continued to decline until it reached the negligible proportion of only about half a million in 1907.

The course of these annual increases may be seen more clearly by the help of the following diagram. In the first place, it may be noticed that the annual increases of nominal capital from 1890 to 1895 were about equal. The curve suddenly commenced to rise in 1896, it reached the highest point in 1897, it commenced to fall in 1898, and it reached a very low point in 1899.

This course is especially interesting when studied with the curve showing the increases of real capital during the same period. Before 1895 the "real increase" curve always stays above the "nominal increase" curve. During the following four years the latter rises above the former by an enormous margin; and since 1899 the "nominal" curve remains considerably below the "real" curve. Then the curve showing the real increases does not have any such violent and abrupt changes as that showing the nominal increases.

These facts also reveal that there is some truth in the principle which had a great influence upon the English legislators that

<sup>47</sup> The watering of the debenture debts has been done usually by giving a new certificate for a debt of say £200 at 2 per cent for a former and actual debt of £100 at or above 4 per cent per annum for either the purpose of making the security more attractive or that of reducing the rate of interest.



railway shareholders would generally find out for themselves what is good or bad, though sometimes after much loss, and to a certain extent explain why Parliament has been so lenient in the regulation of stock watering. But even this self-conviction of the railways could not right what was wrong. While the individual roads had to suffer enormous financial losses in the payment of stamp duties and litigation penalties, the whole system also could not escape from the disastrous confusion created in the minds of the public. In spite of the far-sightedness and moderation of most of the English railways in stock watering, today about £200,000,000, or about \$44,000 per mile of line<sup>48</sup> still encumbers the English railway capital, to say nothing of the unrecorded nominal additions, all of which serves to add more confusion and uncertainty to the complicated questions of railway finance.

This leads us to ask why stock watering came into vogue and

<sup>48</sup> The mileage of the United Kingdom given in the Board of Trade returns for 1908 was 12,845, including double track, and 10,263 miles not including second and third tracks.

what were the underlying notions regarding it. First of all, it must be remembered that stock watering has practically never been defended on its own merits. Nothing was elicited from the inquiry of 1890, which was by far the most important of its kind, to justify the practice. Bankers and large merchants regretted the necessity of stock watering, and many railway officials were opposed to the practice. In short, all seemed to agree that stock watering was an evil, because it was nothing but a pure case of misrepresenting actual facts. It was advocated not as anything good in itself, but as a measure of self-defense against the operations of the stock conversion and investment companies. As these conversion companies had achieved some apparent success in securing and duplicating large blocks of railway stocks, the railway directors made their plea for powers to follow the example of the conversion companies. Their reason was that there might be danger to the properties if large blocks of their stocks were merged in successive trusts. If such duplications were a necessary evil, it was better that they should be effected by the railways themselves rather than by certain irresponsible conversion companies, which were making it a business to effect such duplications for speculative purposes. Besides other objectionable features, the special danger apprehended from the operation of the conversion companies was that as holders of large blocks of stock they would possess a voting power which might be used to thwart the policy of the directors conceived in the best interest of the company.

There appeared to be considerable justification for this apprehension. But it must be noticed that the argument of the railway companies postulated that the operations of the conversion company had already proved such a financial success that shareholders had a strong inducement to avail themselves of them. This, however, was not exactly the case. Take the London & South-Western as an example, we find the price of the company's ordinary stock in May, 1889, when the scheme of the conversion company was first put into operation, was £180. At this price, £3,000 would have bought £1,666 of stock. The latter amount of stock sold at the price of £179, which prevailed at the

time <sup>49</sup> when the company lodged its bill for duplication, would have realized £2,970. On the other hand, if an investment of a similar amount were made in the stocks of the conversion company which operated on the London & South-Western stocks, the result would have been as follows: <sup>50</sup>

Amount Invested £	Stock	Issue Price May, 1889	Amount Purchased £	Price in May, 1890	Market Value May, 1890 £
1,000	1st pref'd	100	1,000	99.5	995
1,000	2nd "	104	962	101.0	972
1,000	Deferred	39	2,562	36.0	923
<hr/>					
3,000					2,890

From these figures it may be seen that the duplication process as carried out by the conversion company did not work out to the advantage of those who invested in its securities in preference to investing directly in the railway stocks. While the investor who put £3,000 into the ordinary stock of the London & South-Western in May, 1889, got a security which was worth £2,970 a year later when the company wanted to duplicate its stocks, the person who invested the same amount of money in the stocks of the conversion company which represented the London & South-Western stocks, had securities which were worth only £2,890. In other words, the investor who availed himself of the agency of the conversion company had lost £80 more on the capital value of his £3,000 investment than he would have lost had he bought the railway stock itself. In addition he had to suffer loss by paying to the conversion company as commission one-eighth of whatever annual dividend he received. If the Caledonian stocks were analyzed, similar results would be obtained. Therefore, the assumption that the duplication or triplication of railway stocks by the conversion companies had become so attractive to investors as to necessitate the adoption of the same process by the railways seems to be erroneous.

It was, however, generally recognized that the conversion companies by manipulation might exercise some baleful influence

<sup>49</sup> May, 1890.

<sup>50</sup> *Economist*, May 17, 1890, p. 618.



and interfere with the voting power of the railway companies. Stock watering, however, did not appear to be the real remedy, for the railway companies, as was then recognized,<sup>51</sup> could never have hoped to keep pace with the conversion companies in the matter of stock manipulations. Furthermore, even if the railways could have manipulated their stocks as rapidly as the conversion companies, it was no reason why they should be induced to join the gambling ranks of the conversion companies. Both the *Railway Times* and the *Economist*<sup>52</sup> strongly criticised the participation in it by the railway companies.

The foregoing was the principal reason given by the railway representatives before the Select Committee of 1890 in advocating stock watering. But, the reasons emphasized within the walls of the committee rooms are often different from those emphasized without. The case in 1890 seemed to be no exception. For in the report of the Isle of Wight Railway<sup>53</sup> we find the only reason given by the directors of that company to their shareholders in advocating the duplication of stocks was that the process would “(1) increase the capital value of the debenture stocks. . . (2) It will benefit the ordinary stock-holders, because experience has abundantly shown that preferred and deferred stocks . . . are together more valuable than one ordinary stock. (3) It will benefit the preference stockholders” by making their securities more negotiable, and so forth. These might not have been the only reasons in every case but they seemed to be the most important ones why the railway companies wanted to “water” their stocks. Thus it was not the fear of the conversion companies, as emphasized by the railway representatives before the Select Committee that led to the watering of stocks, but the hope of pecuniary gains.

There was no doubt that the railway directors had some reason for believing that stock watering would make the securities more valuable. It must also be admitted that some companies had made some apparent gains from the operation. But, as we have shown, such gains were by no means always the rule. On

<sup>51</sup> *Railway Times*, April 26, 1890, p. 541.

<sup>52</sup> *Economist*, May 7, 1890, p. 619.

<sup>53</sup> *Railway Times*, March 1, 1890, p. 304.

the contrary actual losses have been suffered from such manipulations in some cases. Moreover, even if by stock watering the prices of railway securities were inflated, as was expected, such temporary gains of the existing investors would only mean a corresponding loss to the investors who came afterwards. Indeed, as the *Railway Times* maintained,<sup>54</sup> those who looked to the future must have entertained grave misgivings as to the wisdom and even the honesty of the financial legerdemain involved in stock-watering. It is hardly conceivable that the change of the names of securities could create any lasting and real advantage to the general investor without a corresponding loss to some others.

The reason given by the Board of Trade<sup>55</sup> for permitting stock watering is especially worth noticing. That department shared "the common feeling rather against a watering of capital," but, as said one of its officers, if the railway shareholders desired it, I would "incline to think . . . it is rather covered by the general idea that they should be allowed to do what they please. . . ."

One may see plainly that the opinion of the Board of Trade was a negative one. It was one of suspense. They advocated that Parliament should permit stock watering not at all because they thought stock watering was good, but because they thought non-intervention was their policy, and hence, they must follow it.

The immediate effect of stock watering in England has been unmistakably bad. In the first place, this process has unnecessarily added treacherous elements of speculation in railway finance, in turn the cause of much disastrous fluctuations in railway stocks, especially the "adulterated" classes. Genuine investors have been victimized. Many people have sustained disastrous and irretrievable loss from the practice.<sup>56</sup>

Moreover, the process of stock watering, as was prophesied at the time,<sup>57</sup> has conclusively proved to be not only unproductive of any real advantage, but delusive, as shown by the fact that

<sup>54</sup> *Railway Times*, April 24, 1890, p. 541.

<sup>55</sup> *Evidence before Select Committee of 1890*, pp. 42-43.

<sup>56</sup> *Fraser, British Railways*, p. 109.

<sup>57</sup> *Railway Times*, April 26, 1890, p. 41.

“The subsequent balance-sheets can hardly show the true position of the undertaking with so much water added.”<sup>58</sup> In spite of the efforts of the Board of Trade to set forth clearly the nominal additions of each company, stock watering is largely responsible for the subsequent misconception of many people regarding the true nature and extent of railway capital in England. It is hard to tell exactly how much harm these nominal additions have done, but it is certain that they have contributed their part to delude future generations into the belief that the English railway system has cost a great deal more than it really has. And this delusion has undoubtedly done more harm than good. Fictitious capital has long been recognized as a real evil in railway finance,<sup>59</sup> and stock watering has, perhaps, created more fictitious capital than any other known process.

The effect of stock watering upon the general investing public is of even greater consequence. The creation of so many nomenclatures for the “watered” stocks at once caused much inconvenience to the holders of existing stocks. As was expected, the misrepresentation of actual facts by this process brought about much confusion. The numerous descriptions of stocks which had been already complicated enough were made altogether beyond the comprehension of any ordinary investor.<sup>60</sup> The public was puzzled as to the value of such securities. The stockholder could not know exactly what was the real position or status of his investment; the new investor was unable to tell the value of what he was buying. As the readiness of an average man to invest varies directly with his knowledge of the steadiness and true value of the securities, these new elements of uncertainty have unquestionably frightened away many investors who would have come forward otherwise.

Abstractly considered, stock watering is also objectionable. It cannot but work to the disadvantage of the general public. A company with an inflated capital account is usually under pres-

<sup>58</sup> McDermott, *Railways*, p. 164.

<sup>59</sup> *London Times*, May 15, 1866.

<sup>60</sup> The best known varieties of ordinary stock are those known as ordinary, as preferred and deferred ordinary, as preferred and deferred converted ordinary, besides consolidated “A” and “B” ordinary stock and “consols.” See J. Fraser, *British Railways*, p. 65.

sure to "wring" big profits out of its customers so as to pay dividends on its fictitious as well as real capital.

Again, stock watering, as President Hadley said, has been resorted to in order to furnish an excuse for paying higher dividends than the law or public sentiment would otherwise permit.<sup>61</sup> Indeed an English writer claimed that one reason for the adoption of stock watering in England was that the nominal reduction of dividends would render the companies concerned less liable to attack on the ground of excessive profits.<sup>62</sup>

Moreover, it is generally recognized that the "watered" stocks of a railway company usually have some baleful effects upon the wages which it pays and the rates which it charges. The company with a large capital and consequently a low rate of dividend certainly has a more plausible reason for opposing the payment of higher wages to its employees as well as for objecting to any reduction of its charges than it would have otherwise. Although the actual relation between capital and railway rates is unsettled there is hardly any question that, other things being equal, a company with a low rate of dividend is less liable to have its charges reduced by the government than it would be if its rate of dividends were high.

Furthermore, stock watering seems to have been one of the worst causes in giving rise to speculation, and sometimes, to fraudulent manipulations, both of which results have been responsible in making railway securities a much less reliable form of investment than they might have been.<sup>63</sup> The best managed companies have either been cautious or have never attempted to indulge in stock watering. It is the promoter and the speculator who find opportunities in this practice. It is to the advantage of the general investing public and the responsible railway director to avoid this practice. Indeed, the phrase of stock watering is still altogether indefinable, and the evil effects of stock watering have been recognized in the United States as well as in England.<sup>64</sup>

<sup>61</sup> Hadley, *Railroad Transportation*, 1903, p. 55.

<sup>62</sup> E. R. McDermott, *Railways*, p. 164.

<sup>63</sup> E. R. Johnson, *Am. Railway Transportation*, 1907, p. 94.

<sup>64</sup> Of the nine witnesses who testified before the U. S. Industrial Com-



The principle, or rather the lack of principle, involved in stock watering "is to be deprecated."<sup>65</sup> It is "opposed to conservative railroad financiering;"<sup>66</sup> it gives rise to objectionable speculation and gambling;<sup>67</sup> it leads to pursuing a short sighted policy;<sup>68</sup> it should be "emphatically condemned;"<sup>69</sup> it "is a practice against which Parliament should have resolutely set its face."<sup>70</sup>

Thus, from all the evidences, statistics, and authorities consulted and after examining the principal reasons given by various parties, we are led to conclude that stock watering in railway finance is objectionable.

Now what shall be the remedies? No general rule can be laid down for all countries, nor, perhaps, could any be laid down for the same country for all times. Any empirical formula or dogmatic doctrine is liable to be useless, or even harmful. But taking England as an example, it seems that more strict rules were warranted and could have been adopted for the regulation of railway stock watering. Even at the time when the practice was most vigorously advocated, there did not appear to be much objection against more stringent measures than those adopted by Parliament. The only excuse we find for the attitude of the select committee of 1890 and the legislature in giving much freedom to stock watering was that the established principle seemed to be non-intervention. It is hardly necessary to emphasize that to fall back always on old principles in order to solve new problems is a dangerous policy. Even the English people are opposed to all kinds of government interference, it seems that Parliament could have done more to safeguard the public interest. If nothing else, it certainly could have required the appearance

mission of 1900 in regard to stock watering, every one was of the opinion that the practice was harmful. Chief among these witnesses were Professors Seligman, Johnson and Newcomb. *U. S. Industrial Commission Report*, 1900 V, IV, pp. 25 *et seq.*

<sup>65</sup> E. R. McDermott, *Railways*, p. 164.

<sup>66</sup> E. R. Johnson, *Am. Railway Transportation*, 1907, p. 90.

<sup>67</sup> *Railway Times*, April 26, 1890, p. 541.

<sup>68</sup> Hasley, p. 22.

<sup>69</sup> *The Economist*, Feb. 9, 1889, p. 172.

<sup>70</sup> *Ibid.*, July 13, 1889, p. 891.

of uniform nomenclature on the face of the converted stocks as recommended by the select committee. It could have enacted some law to enable the Board of Trade to compel instead of to request the companies to furnish returns showing the nominal additions as distinguished from the actual capital; and it could have enacted a general law so as to insure uniformity in the whole matter, instead of leaving it to be dealt with piecemeal.

On the other hand, we must not criticise the English Parliament according to our understanding of what stock watering means in the United States. In the first place, the "worst forms of stock watering, unhappily so common in America . . . is practically unknown in England."<sup>71</sup> If at all, stock watering must be done openly. It must be sanctioned by Parliament. Such publicity removes much of the temptation to effect stock watering for dishonest purposes. Moreover, the indirect checks imposed by the Stamp Acts have made stock watering quite difficult. Let stock watering be done openly and be investigated first by some dignified government office, it will disappear on its own merits. Therefore, stock watering in England, extensive as it is, has never been nearly as objectionable as in some other countries. Moreover, the English railways seem to have seldom if ever, "watered" their stocks for dishonest purposes. They also appear to have been eager to help the government to prevent the difficulties inherent in stock watering. Hence a request of the Board of Trade has been sufficient to secure full information regarding their nominal additions made each year. Thus by turning to the annual railway returns of the Board of Trade, one may see at a glance what proportion of the capitalization of each company represents water. This difference partially explains why Parliament has taken such lenient measures in regulating it.

Thus, it appears that publicity is one of the most effective and practicable checks against objectionable stock watering in railway finance. To insure this, railway companies should be compelled to show in their accounts and balance-sheets all their nominal additions. They also should be required to furnish periodic and due statements exhibiting clearly such nominal additions as distinguished from the actual capital, with remarks as

<sup>71</sup> Hadley, *Railroad Transportation*, 1903, p. 156.

to the time when, and circumstances under which, the additions were made. A uniform nomenclature should be marked on the certificates of all adulterated stocks so as to avoid confusion. It further appears that stock watering in railway finance should be discouraged and placed under government supervision in all cases, and prohibited whenever circumstances permit.

## CHAPTER VII

### THE REGULATION OF RAILWAY ACCOUNTS

The English legislature took pains to regulate railway accounting as early as it endeavored to regulate other branches of railway finance; but it did not prescribe any precise system of accounting before 1868. The keeping of accounts had been obligatory upon the railway companies in common with other joint stock companies. For this purpose separate provisions were made in the special acts of incorporation. Thus a clause in the Croydon Act of 1837<sup>1</sup> provided:

“That the said directors shall cause a book or books to be kept by a book-keeper who shall be expressly appointed by the said directors for that purpose, and who shall enter or cause to be entered in the said book or books true and regular accounts of all sums of money received and expended for or on account of the undertaking . . . ; and such book or books shall at all reasonable times be open to the inspection of the respective loan creditors . . . without fee or reward, and the said loan creditors or any of them may take copies of or extracts from the said book or books without paying anything for the same; and in case the said book-keeper shall refuse to permit such loan creditors or any of them to inspect such book or books, or to take such copies or extracts as aforesaid, such book-keeper shall forfeit and pay over for every such offence any sum of money not exceeding £20.”

In 1841 a member of Parliament inquired of the president of the Board of Trade as to whether it had not become necessary to take evidence to show that all railway companies should periodically furnish to the Board of Trade a debtor and creditor account, drawn out on a simple but uniform plan, of their half-yearly receipts and expenditures, etc. To this inquiry, however,

<sup>1</sup> I V. c. cxix, s. CLXXXVIII.



the president of the Board of Trade answered that he did not think that it had become desirable to make any such regulations.<sup>2</sup> This last statement shows how little value was attached to uniform accounting during the forties.

In 1842 in connection with the collection of stamp duty on passenger fares, a clause was inserted in an act of that year<sup>3</sup> to the effect that all companies should keep accounts of their passenger receipts in such form as should be prescribed by the commissioners of stamps and taxes, and should, within five days after the first Monday in each calendar month, deliver to the said commissioners or other duly appointed officers a true copy or copies of the accounts so kept. Another section<sup>4</sup> of this act provided that all books containing passenger receipts should be open to the inspection of officers of stamp duties, under penalty of £50 for each offense against the law.

For the purpose of government purchase of railways, a clause was introduced in the Railway Regulation Act, 1844,<sup>5</sup> to the effect that, during the period of three years previous to the time when option of revision of rates or state purchase of a railway should become available, true accounts should be kept of all sums of money received and paid, that a half-yearly account in abstract should be prepared, showing the total receipt and expenditure, and that these accounts should be open to public inspection.

This general provision as well as those contained in the act of 1842 just referred to, were, however, not made primarily for the purpose of regulating accounts. It was not until 1845 that general provisions were made to regulate railway accounts. In the Companies (Clauses) Act of that year,<sup>6</sup> no less than eight clauses were devoted to the regulation of this branch of railway finance. By this act, railway directors were required to cause "full and true accounts to be kept of all sums of money received or expended on account of the company . . . and of the matters and things for which such sums of money shall have been re-

<sup>2</sup> Hansard, 73: 1070-1071.

<sup>3</sup> 5 & 6 V. c. 79, s. lv.

<sup>4</sup> Section V.

<sup>5</sup> 7 & 8 V. c. 85, s. 5.

<sup>6</sup> 8 V. c. 16.

ceived or disbursed. . . .” The act further provided <sup>7</sup> that the books of a company should be balanced at the prescribed periods,<sup>8</sup> and an exact balance sheet should be made up, exhibiting a true statement of the capital stock, credits, and property of every description belonging to the company, as well as the debts due by the company at the date of making the balance sheet. A distinct view of the profit or loss which might have arisen in the course of the preceding half year should also be presented. Such balance sheet was also required to be examined by at least three of the directors, and was to be signed by the chairman or deputy chairman of the company. Moreover, both the shareholders and mortgagees were authorized to have access to these accounts at the prescribed or other reasonable times, with the liberty of taking extracts therefrom without charge.<sup>9</sup> In the Railways Clauses Act of the same year,<sup>10</sup> a further provision was made to require, under penalty,<sup>11</sup> railway companies to prepare and transfer to the clerks of the peace and the over-seers of the poor of the counties and parishes traversed by the railway, abstracts of their annual accounts.

The financial depression caused by the railway mania of 1847 led to some investigation of the accounts of railway companies. A committee of the House of Lords was appointed in 1849 to consider “whether the railway Acts do not require amendment, with a view of providing for a more effectual audit of accounts to guard against the application of the funds of such companies to purposes for which they were not subscribed, under the authority of the Legislature.”<sup>12</sup> This committee pointed out that a serious omission in the existing law was the want of any prescribed and uniform system of accounts, and recommended the enforcement of some statutory forms to be binding, within cer-

<sup>7</sup> Section 116.

<sup>8</sup> If no period is prescribed, then the balance should be made fourteen days at least before each ordinary meeting.

<sup>9</sup> 8 V. cap. 16, ss. 55 and 117-119.

<sup>10</sup> 8 V. cap. 20, s. 107.

<sup>11</sup> In case any railway company should fail to prepare or transmit such accounts as required by law, it should forfeit for each failure the sum of twenty pounds.

<sup>12</sup> *Report of Royal Commission on Railways*, 1867, p. xviii.

tain limits, upon all railway companies.<sup>13</sup> It further proposed that the statutory forms should embrace the following particulars:<sup>14</sup>

1st. A full statement of all the parliamentary powers granted for raising money, showing the undertakings to which they were applicable; the manner in which the money had been raised; the nature of securities issued under each act, with the conditions and rate of interest applicable to each, and the amount of money obtained and in arrears; and the balance of parliamentary powers unexhausted.

2nd. A capital account explaining how the money shown as having been raised under the parliamentary account had been disbursed, and

3rd. An account of the ordinary income and expenditure of the railway company.

It also recommended that separate accounts should be kept for separate branches of the enterprise of every company.

Moreover, it was further urged that the right of inspection by shareholders of the companies' accounts should be unrestrained; that all accounts without exception touching or relating to the receipts or payments of each company should be required to be produced, and that in case of refusal the statutory penalty should be extended from the book-keeper to the governing body.

About the same time, the Railway Commissioners<sup>15</sup> also voiced the opinion, apparently with the general approval of the railways, that the companies should specify in their accounts every loan contract, the period for which it was contracted, with the rate of interest and the liquidation of such loans or portion thereof as might be made from time to time.<sup>16</sup>

These recommendations, practical as they were, failed to mature into legislation. They were too much out of line with the *laissez faire* ideas of the time.

During 1859 to 1862, the Board of Trade persistently recommended that separate accounts should be kept of the amounts of

<sup>13</sup> *Report of 1909 Departmental Committee on Accounts, etc.*, p. 4.

<sup>14</sup> *Report of Royal Commission on Railways*, 1867, p. xciii.

<sup>15</sup> These early railway commissioners had the duty of examining railway bills and differed materially from those appointed since 1873.

<sup>16</sup> C. L. Webb, *Letter to the President of the Board of Trade*, 1848, pp. 59-60.

debenture stocks created and disposed of, and of the application of the money raised by such issues.<sup>17</sup> It was, however, not until 1866 that Parliament began to give effect to some of these recommendations. In the Companies Securities Act, 1866, provisions were made to require all railway companies, within fourteen days after the end of each half year, to make an account of their loan capital authorized to be raised and actually raised up to the end of that half year. In the account, the railway companies were required to specify the following particulars, in addition to what was required by former acts.

(1). The amount or prospective amount of loans authorized or confirmed by Parliament;

(2). Whether or not the obtaining of the certificate of a justice for any purpose, or the obtaining of the assent of a meeting of the company, was made a condition precedent to the exercise of the borrowing powers;

(3). The date at which such condition was fulfilled;

(4). The aggregate amount of the company's existing debts contracted on mortgage, bond, or debenture stock, up to the end of the half year; and

(5). The aggregate amount remaining to be borrowed.

Then the second and every subsequent half-yearly accounts were required to show the items described in paragraphs (1) and (4) for two consecutive years, and the increase or decrease of any of those items in the second of those half years as compared with the first. The Board of Trade was authorized to prescribe, by public notice in the *London Gazette*, the forms of the half-yearly accounts of the loan capital of railways from time to time.<sup>18</sup>

The act further provides that within twenty-one days after the end of each half year, every railway company should deposit with the registrar of joint stock companies, a copy, certified and signed by the company's registered officer as a true copy, of their loan capital half-yearly account. Moreover, these accounts were to be open to the inspection of shareholders, stockholders, etc., at all reasonable times without charge.

Furthermore, the act made it unlawful for any railway com-

<sup>17</sup> *General report of the Board of Trade on Railway bills*, 1861, p. 23.

<sup>18</sup> 29 & 30 V. cap. 108, s. 6.



pany to borrow any money on mortgage or bond, or to issue any debenture stock, "unless and until they have first deposited with the registrar of joint stock companies . . . a statement certified and signed by the company's officer" in the prescribed manner.<sup>19</sup>

By this series of enactments, Parliament "endeavored to secure a faithful record and account of all the financial transactions of the companies to be kept under the authority of the directors; a power for any shareholder within limited bounds to examine the company's accounts; the periodical exhibition of a balance sheet showing all the capital, stock, credits, and property of and debts due by the company, and giving a distinct view of the profit and loss; and the payment of a dividend out of profits, coupled with a prohibition against reduction of capital by means of dividends. . . ." <sup>20</sup>

It may be observed, however, that all except the last one of the statutes referred to were enacted for the purpose of requiring the companies to keep accounts according to their own way, without any governmental interference. Even the act of 1866 just referred to went no further than to authorize the Board of Trade to prescribe and alter some forms of loan accounts. Indeed, it was not until the report of the Royal Commission on Railways of 1867 had been made that steps were taken by means of the Regulation of Railways Act, 1868, to give effect to the far-sighted recommendations of the select committee of 1849 regarding the adoption of a uniform system of accounts. We shall, therefore, examine (1) how the results of the old system of regulation of railway accounts led to the adoption of the new system of 1868, (2) the nature of the principles set forth in the new system, (3) the defects of the new system, and (4) what Parliament has done since.

The early system of regulation required railway companies themselves to keep true and clear accounts of all their incomes and disbursements for the purpose of preventing irregularities in the application of the companies' capital. This was based on the assumption that the ordinary maxims of prudence and good faith, combined with the usual practice of persons engaged in commercial affairs would be sufficient to secure the observance

<sup>19</sup> 29 & 30 V. c. 108, s. 10.

<sup>20</sup> *Report of Royal Commission on Railways*, 1867, p. xxiii.

of these regulations.<sup>21</sup> "Unhappily," as it was remarked in the House of Commons in 1867,<sup>22</sup> "the fact was far otherwise." It was true that railway companies always kept accounts and uniformly prepared a sort of balance sheet every half year; "but it was frequently such as no merchants or bankers would be satisfied with." It was claimed that a great number of companies considered a balance sheet a means of mystifying and misleading their proprietors and the public, and that balance sheets were often used to conceal the real state of a company. It has even been said that the balance sheet of a railway company has no more effect than a sheet of waste paper.<sup>23</sup>

Moreover, there was no uniformity whatever in the matter of railway accounts during those years.<sup>24</sup> One company had one form of accounts; a second one, another; and a third one a form still different. It was not only impossible to compare the accounts of the different companies, but also impossible even to compare the accounts of the same company for different years.

Regarding the prohibition against the wrong application of the companies' capital, Sir William Hunt in introducing the railway and joint stocks companies' account bill, 1868, said,<sup>25</sup> that no one could read the act of 1854 for the consolidation of railway and joint stock companies, or the Companies' Act of 1862, without being struck by the grave and imperative language in which the acts directed that no dividend should be paid unless their accounts showed that the dividend has really been earned, and could be paid out of the net profits of the company. But in this case also the law has proved ineffectual. Directors were often tempted to disregard all the moral and legal obligations in order to make things look "pleasant" to their proprietors. Dividends were frequently declared out of capital, until it became impossible to tell whether or not it was really earned.<sup>26</sup>

The effect of this practice was that railway shareholders were so "bewildered and mystified by cooked accounts, manipulated figures, partial statements, and delusive representations of railway property" that they actually regarded the payment of divi-

<sup>21</sup> Hansard, 187: 1588.

<sup>22</sup> *Ibid.*

<sup>23</sup> Fraser, *British Railways*, 1903, p. 140.

<sup>24</sup> See *Railway Times*, May 23, 1868.

<sup>25</sup> Hansard, 187: 1588.

<sup>26</sup> *London Times*, August 27, 1866.

dend out of capital as a legitimate practice and looked at the chaos of railway accounting as hopeless. Apparently they imagined that they could "eat their cake and have it too."<sup>27</sup> As a natural consequence of this state of affairs, suspicion arose, which proved harmful not only to the public but to the railways as well. As said the *London Times* in 1866,<sup>28</sup> "nothing has damaged railway property so much as the suspicion, notoriously reasonable, that the truth was not put before the public in the reports of railway directors."

The magnitude of the evil due to the lack of confidence could not be fully comprehended at the time. The problem facing the railway companies was not merely to satisfy the shareholders of that time. It was necessary that they should give assurance to the investing public in order to get additional money to keep the railways "alive." Explanations at meetings, statements of figures capable of favorable inference, sometimes sufficed to satisfy those who had already put their money in; but they could not attract new investment.

Following the suspicion of the investing public, the shareholders also became discontented. They saw their property depreciating; they found that their shares could be disposed of only at great sacrifices. No longer were they to be satisfied with "information" alone.<sup>29</sup>

The difficulty, however, was not exactly an economic one. There was plenty of money for investment. It was generally recognized at the time by clearer observers that if there was a single company where shares were considered by its directors to have fallen too low in the market, they could set the matter right easily. There were plenty of shrewd people at the time waiting with money to find investments. "Give them a statement such as they require, and such as any city accountant . . . would prepare, in a form that the simplest tradesman might understand it, and forthwith they will bid within a fraction of the true value of the shares."<sup>30</sup> Thus the problem before Parliament was to stop suspicion and to restore confidence.<sup>31</sup>

<sup>27</sup> *London Times*, November 8, 1867, p. 6.

<sup>28</sup> *Ibid.*, August 27, 1866.

<sup>29</sup> *Economist*, December 28, 1867.

<sup>30</sup> Fraser, *British Railways*, 1903, p. 140.

<sup>31</sup> *Economist*, December 23, 1867.

It was recognized that besides retreating from the costly litigations, in which the railways were fond of indulging, there was only one thing required to set the railways "straight before the public."<sup>32</sup> They must make a clear statement of their affairs. However unpromising it might be, the whole truth must be told so that no disguise or reserve could be suspected. It was urged that<sup>33</sup> there was no cure for the mischief of delusion nor any hope for railway property except by the introduction of a principle of accounting in which nothing should be admitted as profit but surplus of actual receipts over actual expenditures. The Royal Commission on Railways in its report of 1867 also recognized<sup>34</sup> that greater facilities should be afforded for the detection and repression of acts by which the public were misled or deceived. It further said, "The concealment or imperfect representation of important facts, which no one is charged with the duty of faithfully disclosing to the shareholders or the public, will be found to underlie most of the delinquencies . . . and there can be little doubt that many objectionable transactions would not be embarked in if they were to be immediately followed by publicity. . . ." A member of Parliament<sup>35</sup> urged before the commission that Parliament should take care to see that the periodical railway accounts should "comprise not only every item of expenditure but every liability, and every contract that they have entered into . . . and leave the public to judge for themselves. Many other members of Parliament were also of the opinion that shareholders should only ask the legislature to require that accounts be kept in an intelligent way so that they may have a chance to "sift them to the bottom."<sup>36</sup>

But it was the report of the commission that gave uniform accounting its proper place of importance.<sup>37</sup> It emphasized that the provisions of the law regarding the financial affairs of railway companies would always remain defective, until a uniform system of accounts was secured. Until that was done, each com-

<sup>32</sup> *London Times*, February 9, 1863, p. 9.

<sup>33</sup> *Ibid.*, November 8, 1867, p. 6.

<sup>34</sup> *Report of Royal Commission on Railways*, 1867, p. xliv.

<sup>35</sup> G. P. Bidder, M. P., before Royal Commission on Railways, 1867. *Evidence before Royal Commission*, p. 803.

<sup>36</sup> *Hansard*, 191: 1541-1542.

<sup>37</sup> *Report of Royal Commission*, 1867, p. XXIII.



pany was at liberty to adopt its own form of accounts and to vary that form from time to time. The result would always be that no adequate comparison of the financial affairs of different railways, or even of the same railway, could be made. This lack of uniformity in accounting not only deprived the public of the power to ascertain the relative conditions of different companies, but also deprived one company of the means of profiting by the experience of another.

Thus it soon became generally recognized that until clear, complete and truthful accounts, on a common system, could be obtained, there would be continued suspicion. The urgent need of such a uniform system of accounts was recognized, alike, by the railways and Parliament. This was well shown by the fact that while both Houses of Parliament were giving the matter attention, the railway men themselves were holding meetings, in 1868, to discuss the same subject.<sup>38</sup>

To give effect to some of these recommendations, Sir William Hunt introduced the Railway Audit of Accounts Bill early in the session of 1867.<sup>39</sup> In the following year, another bill, called the Joint Stock Companies Accounts Bill, was introduced, the aim of which, similar to that of the bill of the previous year, was to secure to shareholders and the public, periodically, a true balance sheet of the financial affairs of railway companies and a true statement of the assets and liabilities.<sup>40</sup>

Neither of these bills, however, was enacted into law. In the meantime, the government prepared the Regulation of Railways Bill, which embodied many of the principles contained in the two bills just referred to. This bill was first introduced into the House of Lords.<sup>41</sup> A considerable proportion of the bill was based on the recommendations of the Royal Commission.<sup>42</sup> Moreover, the Board of Trade had also received frequent deputations and much correspondence on the subject from railway experts.<sup>43</sup> In fact some of the very fundamental matters, such as the forms

<sup>38</sup> *Railway Times*, May 23, 1868.

<sup>39</sup> For purpose of this bill, see *Railway Times*, June 15, 1867.

<sup>40</sup> Hansard, 187: 1588.

<sup>41</sup> *Ibid.*, 192: 1294.

<sup>42</sup> Hansard, 192: 115-116.

<sup>43</sup> *Ibid.*, 192: 1294.

of accounts, etc., were adopted only after extended consultation with some of the most prominent railway accountants.<sup>44</sup>

When the Regulation of Railways Bill was introduced, the legislators recognized the great change which had taken place in the English railway system since the forties. Thus attention was called to the fact that all legislation connected with railways must be cautious, practical, and well considered, and that in dealing with the subject it was as necessary to look at the interest of the public, on whose behalf the railways were constructed, as it was necessary to take care of the interest of the shareholders who expended their money in those great undertakings.<sup>45</sup> Parliament was also reminded that it was by no means desirable to adopt a policy by which it would lay down stringent rules with respect to all the details of accounts and the management of the companies.<sup>46</sup> It was believed that sufficient time had elapsed since the panic of 1866-1867 to afford Parliament the means of legislating upon the subject without acting in the hasty and ill considered manner which might have been inevitable if they had dealt with it during the previous session.<sup>47</sup> The complete collapse also led the public and the railways to appreciate more fully whatever action might be taken. It was under the influence of such prevailing opinion that the first important act to regulate railway accounts was prepared.

The first part of the bill related to accounts and audit; the second to the liabilities of railway companies in certain cases as general carriers; the third provided for the safety of passengers; the fourth dealt with the matter of compensation for accidents; the fifth had to do with light railways; the sixth referred to arbitrations by the Board of Trade; and the last part was given to miscellaneous matters. "None of these," said the *Economist*,<sup>48</sup> "are unimportant; and all are designed to bring railway law into accordance with recent experience." But the "novel part of the bill is the first section, making new rules for the auditing and inspection of railway accounts." On account of its importance

<sup>44</sup> Hansard, 190: 1957.

<sup>45</sup> *Ibid.*, 190: 1955.

<sup>46</sup> *Ibid.*, 190: 1956.

<sup>47</sup> *Ibid.*, 190: 1956.

<sup>48</sup> *Economist*, March 21, 1868.

and novel nature, that part of the bill, therefore, received much discussion both in and out of Parliament.

During the course of the passage of the bill, Parliament laid great emphasis upon the importance of the forms of accounts which were attached to the bill. It had in mind that the accounts should neither on the one hand be limited to the ordinary payments and receipts, nor on the other hand be so extensive as to make it hard for the eye to follow or the mind to comprehend.<sup>49</sup> They should be sufficiently elastic to meet the varying circumstances of the different railways, and at the same time precise enough to enable shareholders of ordinary intelligence to compare one year's accounts with those of any other year and the accounts of one company with those of another. The guiding purpose was that every person looking at these forms should be able to see at a glance the exact financial position of each company.<sup>50</sup>

The importance of uniformity in railway accounts was greatly emphasized. The advocates of such a uniform system had in mind two important objects: First, to prevent the "dressing" of accounts, and secondly to insure that every item of expenditure should pass through the books of the company. Incidentally, it was also hoped that when all companies adopted the same form of accounts, the public and the investors would be enabled to form some estimate of the values of the shares and securities of railways.<sup>51</sup>

But it was recognized that according to the provisions of the bill, the usefulness of the prescribed uniform system of accounts would largely depend upon the voluntary efforts of the companies themselves. If the companies made use of these prescribed forms, as they should for their own interest, the uniform system would be of great value. The auditors and inspectors would have a convenient guide in the "labyrinth of accounts."<sup>52</sup> The common form would become familiar, and people would know what to verify. One more important and general use of such a common system was that so long as there was no downright falsification, it would be possible to compare one railway

<sup>49</sup> Hansard, 190: 1972.

<sup>50</sup> Hansard, 190: 1957.

<sup>51</sup> *Ibid.*, 191: 1538.

<sup>52</sup> *Economist*, August 29, 1868, p. 993.

with another, and that, where circumstances were nearly similar, the comparison would be invaluable.<sup>53</sup> As a prominent railway accountant said, in the Manchester Railway Conference in 1868, "The importance of the adoption by all railway companies of a clear, complete and uniform system of accounts, properly audited and vouched, can scarcely be over-estimated. . . ." <sup>54</sup> It was generally recognized that it was exceedingly desirable to have one form of accounts.<sup>55</sup> In fact all those members of Parliament, who spoke in connection with the bill during its passage, advocated the adoption of a uniform system.

Some contended, however, that it was impossible to have a uniform scheme of accounts for all companies, because the circumstances of the different companies were so dissimilar. A uniform scheme would not furnish any accurate comparison, it was urged, unless people knew what were the gradients of each line and the prices of fuel and labor in each instance as well as other details which varied in different places.<sup>56</sup> This objection, however, failed to gain much weight and experience has since proven that a uniform system is desirable in spite of its drawbacks.

The greatest defect of the bill, however, was said to be the lack of any regulations governing the "filling up" of the uniform forms. It was urged that the usefulness of these forms might be much lessened, if not nullified, by irregularities in the entering of the different expenses into the accounts. Thus the *Economist* said,<sup>57</sup> "We question very much . . . whether the dictation of a certain form in the accounts will do much good. . . . There will be room for endless disputes as to whether certain expenses are for renewals or new works, or as to whether capital or revenue should be changed. . . ." It also believed <sup>58</sup> that the distrust of the people had been related to the substance of the accounts, and that changing the form would not mend matters much.

The *London Times* also pointed out that "a uniform system of accounts would prevent one line from showing better than an-

<sup>53</sup> *Economist*, August 29, 1868, p. 995.

<sup>54</sup> *Railway Times*, May 23, 1868.

<sup>55</sup> Hansard, 190: 1961-62.

<sup>56</sup> *Ibid.*, 187: 1590-91.

<sup>57</sup> *Economist*, March 21, 1868.

<sup>58</sup> *Ibid.*, August 29, 1868, p. 992.



other, but it would not prevent them all from showing untruly.”<sup>59</sup> This paper believed that the people clamored mostly over the evil itself, instead of the source of the evil. “The root of the evil,” it said, “lies not so much in the system of accounts, of which every body complains, as in the principle of accounting. . . .”<sup>60</sup>

These anticipations, especially that of the *Economist*, have become true since, as shown by the report of the departmental committee on railway accounting and statistical returns of 1909 to be referred to hereafter.

It was also urged that there should have been inserted in the act provisions for a “wear and tear” account. It was believed that the proper way of providing for renewals was to lay aside certain sums annually in proportion to the value of the material and the depreciation it would suffer. This was regarded as being especially important, since the pressure of heavy renewals had been one of the chief factors in tempting railway boards to charge capital with what did not belong to it. In spite of the requirement of the engineers’ certificates concerning rolling stock and permanent ways as provided by the bill, some railway men thought that it would be impossible to ascertain the real surplus profit to be divided as dividends without a depreciation account.<sup>61</sup>

Furthermore, there were also other persons who were entirely opposed to any such regulation of accounting. They based their opposition chiefly on the ground that England “had grown great by having private parties to manage their own affairs in their own way — by individual care of individual interest which could not be superseded by the action of any government department whatever.”<sup>62</sup> The *Railway Times*,<sup>63</sup> which was strongly opposed to the measure, said, “The entire railway history of the kingdom is redolent of the idea as well as of the practice of shareholders being at all times and under all circumstances fully cognizant of any matter or detail in which their property may be involved.” After citing the satisfactory results of several of the companies

<sup>59</sup> *London Times*, November 8, 1867, p. 6.

<sup>60</sup> *Ibid.*, November 6, 1867, p. 6.

<sup>61</sup> See *Economist*, August 29, 1868, p. 993.

<sup>62</sup> See Hansard, 167: 1569.

<sup>63</sup> *Railway Times*, June 8, 1867.

who had been left to manage their accounts in their own way, the paper concluded that "all these private parties have been conducting their own affairs in their own way; and is not to be endured that they should be interfered with. . . ."

Furthermore, in the debate in Parliament, it was also agreed that it was quite impossible to control railway directors by acts of Parliament. If they were determined to "cook" the accounts, they would do so, in spite of all the acts in the statute book.<sup>64</sup>

Another important provision of the bill was that regarding the penalty for falsifying accounts. This question did not receive so wide discussion as that concerning the accounts themselves but it excited more animated debate in Parliament than any other part of the bill. The original bill provided that "if any statement of accounts, balance sheet, estimate or report, which is required by this act is false in any particular, the auditor or officer of the company who signed the same shall, unless he satisfies the court that tries the case that he was ignorant of such falseness, be liable, on conviction thereof on indictment, to fine or imprisonment, or on summary conviction thereof to a penalty not exceeding fifty pounds."<sup>65</sup>

The most striking feature of this provision was that the onus of proof was placed on the defendant. This at once aroused intense opposition. The beneficial effect of punishing the wilful falsification of railway accounts was generally admitted; but the manner of inflicting such punishments as provided by the clause proved extremely distasteful to many. The provision was strongly opposed because it was entirely contrary to ordinary principles of law. According to usage, a man was assumed to be innocent until he was proven guilty, while according to the provision in the bill, the railway officers were to be held guilty until they could establish their innocence. According to this principle, it was feared that if there was any falsehood in any of the accounts, statements, balance sheets, etc., so voluminously required by the bill, and which the chairman and secretary were required to sign, they would be held guilty and might be sent to jail unless they could prove their ignorance of the falsity. Nor were railway officers to be allowed the ordinary privilege of trial

<sup>64</sup> See Hansard, 191, p. 1540.

<sup>65</sup> *Railway Times*, March 21, 1868.

by jury like other Englishmen, but they must prove their ignorance to the satisfaction of the court trying the case. It was urged that this system would be liable to be attended with great oppression, to say nothing of the violation of all established customs. The judges, in spite of their ability and the respect of the people for them, were not immune from errors. In occasional instances, they might also have a grudge against railway officials. Therefore it would be necessary, it was contended, to appoint railway officers who know nothing of the accounts so that they might be able to prove their ignorance and could sign the required documents without danger of being imprisoned or fined.<sup>66</sup> If these disgraceful penalties were to be attached to the ordinary performance of the duties of a railway officer, it would become impossible to find any respectable people to perform such duties.

The *Economist* also questioned the practicability of the provision, not only because the provision was contrary to the ordinary practice of law but because it was illusory. It called attention to the fact that particular falsities were as likely to creep into accounts by neglect as by wilful perversion. Therefore it believed that the clause, as it stood, instead of doing any good to insure true accounts would offer a premium on being neglectful and ignorant.<sup>67</sup>

Ultimately, the heated discussion resulted in the amendment of the penalty clause so as to read: <sup>68</sup>

“If any statement, balance sheet, estimate, or report which is required by this act be false in any particular to the knowledge of the auditor or officer of the company who signs the same for the company, such officer or auditor shall be liable upon conviction thereof on indictment, to fine or imprisonment.”

Thus the onus of proof was removed from the defendant; and railway officers were to be punished for signing statements and accounts which they knew to be false.

The bill when first introduced was quite a voluminous document but it was found, on close examination, that many of the provisions, though admirable in theory, were impracticable. Accordingly, it was greatly reduced in size before it reached the second reading in the House of Lords, so as to make it a smaller

<sup>66</sup> Hansard, 192: 6-7 and 190: 1962.

<sup>67</sup> *Economist*, March 21, 1868.

<sup>68</sup> Hansard, 192: 7-8.



and more practicable measure. After various modifications and improvements, the bill received the royal assent on July 31, 1868, and became the Regulation of Railways Act of that year.<sup>69</sup>

Fifteen schedules or forms were prescribed, a great part of which relate to accounts, while the others deal with statistics of traffic, mileage, etc. They include, in the first place, a set of capital accounts. No. 1 is a statement of capital authorized and created by the company, requiring the enumeration in detail of the acts or certificates of the Board of Trade, authorizing the creation of capital, and a statement in each case of the amount actually created and the balance left. No. 2 is a statement of stock and share capital created showing the proportion received, and requires the exhibition in parallel columns of the amount of capital created under each act or certificate, the amount received, calls in arrear, amount uncalled and amount unissued. No. 3 shows the capital raised by loans and debenture stock, and the amount of each at the beginning and end of the half year compared. These are, however, subsidiary to Nos. 4 and 5, the object of which is to show at a glance how the capital account stands and what has been done upon it during the half year, especially how the money has been spent. The statements are quite detailed, and "shareholders and all concerned should be able to tell," it was expected, "at a glance whether there is any item here properly belonging to revenue."<sup>70</sup> No. 6 is a return of the working stock, which was regarded as of great importance in connection with the engineers' certificate which must be affixed to the accounts.<sup>71</sup> The object of Nos. 7 and 8 is to show in detail the proposed further expenditures on capital account in the following half year and subsequent years. A comparison of the proposed expenditures compared with the available assets of the company was expected to be of great value. The need of such an account had been insisted upon for some years and its usefulness was well recognized. It was, however, pointed out at the time as a defect that the directors were in no way bound

<sup>69</sup> 31 and 32 V. c. 119.

<sup>70</sup> *Economist*, August 29, 1868.

<sup>71</sup> The engineer and the locomotive superintendent were required to certify, respectively, that the company's permanent way, stations, etc., and the company's plant, engines, etc., were maintained in good working condition and repair during the half year.



by their estimates even as to the half year concerned; but it was hoped that this would be safeguarded by the fact that the ensuing account would show whether or not the estimates were correct, although the remedy would be only *ex post facto*.

Nos. 9, 10 and 11 are revenue accounts. The first deals with the gross revenue, the second the net revenue, and the last, the appropriation of the balance, if any, available for dividends. Supplementary to No. 9 is No. 12, which consists of abstracts A. B. C. etc., referred to in No. 9. Those abstracts were expected to prove especially useful in enabling the shareholder to study his own company's affairs and compare its expenditures with that of others. Form No. 13 is the general balance sheet, which exhibits the whole system. Statistical forms to show mileage statements and those to be used by the company's engineers and locomotive superintendents were also prescribed.

These prescribed accounts may be conveniently classified into two groups: those relating to capital and those relating to revenue. According to this system, the receipts and expenditures on capital account are shown separately from the general balance sheet, which differs materially from the American system where the balance sheet exhibits in condensed form all the assets and liabilities of the company, and the income statement shows the gross earnings and expenses as well as the net revenue and its application. This distinctive feature of British railway accounts is sometimes known as the "double account system," according to which the details of capital expenditures and capital receipts are separated from the other assets and liabilities. Only the balance, either positive or negative, enters into the general balance sheet. This system is based on the theory that inasmuch as the capital is created by Parliament for a specific purpose, that purpose is best fulfilled by crediting to one special account all amounts received from the issue of capital securities and debiting the account with all the assets acquired with the funds so received.<sup>72</sup>

According to the provisions of the act every incorporated company, seven days at least before each ordinary half-yearly meet-

<sup>72</sup> Cf. an able article by A. M. Sakolski on the "Control of Railroad Accounts in leading European countries," in the *Quarterly Journal of Economics*, May, 1910.

ing, should prepare and print, according to the statutory forms, a statement of accounts and balance sheet for the preceding half year and an estimate of the proposed capital expenditure for the ensuing half year, which should be the same as those submitted to its auditors. In case of default, the company should be liable to a fine of five pounds per day. The Board of Trade, with the consent of a company, was authorized to alter the statutory forms to suit special circumstances.

The act further required that every statement of accounts, balance sheets, etc., required by the act, should be signed by the chairman or deputy chairman of the company's directors and should be preserved at the company's principal office. A printed copy was required to be forwarded to the Board of Trade. Shareholders and holders of debentures, etc., were also entitled to receive copies of such accounts on application. However, all persons interested in the company's affairs were permitted to peruse the original copy without charge. When a company should act in contravention of these provisions, it would be liable to a penalty not exceeding fifty pounds for each offense.

Upon the enactment of the act, the *Railway Times* expressed much dissatisfaction over the whole measure,<sup>73</sup> and several members of Parliament also regarded the act as being too weak to be of much value.<sup>74</sup> More than anything else, the means for securing the object of the act was severely criticised. Dissatisfaction was especially expressed at the purely permissive character of the requirements. The only compulsory clause was that requiring the publication of the accounts in a certain form. Even this compulsory provision was regarded as weak. A maximum penalty of £35 per week was regarded as being ineffective to give any great stimulus to exertion, at least in the case of important companies where a body of directors at any time had much to gain by a stealthy evasion of the act. Much mischief might be done long before it could become worth while to prevent the accumulating penalties.<sup>75</sup>

On the other hand, the *Economist* at once recognized the prescribed accounts as being very "skillfully framed." After ex-

<sup>73</sup> *Railway Times*, August 1, 1868.

<sup>74</sup> Hansard, 190, p. 1968.

<sup>75</sup> *Economist*, March 21, 1868.

amining and criticising every feature, it concluded that "the accounts are very perfect and likely to be useful, in spite of all defects." <sup>76</sup>

It was further recognized that the silent influence of the provisions would have a great amount of influence in preventing companies from violating these regulations. The fact that a departure from the prescribed forms would at once expose a defaulting company to the penalty of discredit, which would be much severer than a fine, would insure at least a nominal compliance with the provisions. <sup>77</sup>

The Regulations of Railways Act, 1868, closed the legislation on railway accounting. The regulations governing, and the forms of accounts adopted in that year were generally recognized as being very good in themselves. They emphasize the advanced ideas which English legislators entertained long before others realized the importance of this branch of railway regulation. But they went no further. Instead of following up its good start and taking advantage of its subsequent experience to improve these regulations and principles as courageously as it had adopted them, England settled down for many years to the idea that nothing further was needed. Thus many defects in these regulations have been suffered to exist during the last forty years.

Among these defects, first of all, may be mentioned the fact that there seemed to be much variation in the date of closing the financial year of some of the companies. This defect, though apparently of little consequence, had the undesirable effect, as pointed out by the departmental committee on railway accounts and statistics of 1909, <sup>78</sup> of rendering comparisons less valuable than they would have been if the same date were common to all companies.

Then the established regulations required that railway companies should prepare their accounts in accordance with the forms prescribed in the act of 1868 half-yearly is not in accord-

<sup>76</sup> *Ibid.*, Aug. 29, 1868.

<sup>77</sup> *Economist*, March 21, 1868.

<sup>78</sup> *Report of the Committee of the Board of Trade on Railway Accounts and Statistical Returns, 1909* (hereafter called report of departmental committee on accounts and statistics, 1909), p. 4.

ance with the usual practice of other companies and does not seem necessary according to expert opinion.<sup>79</sup>

But another defect, which is of much greater consequence, lies in the lack of uniformity in practice. "It is obviously of the first importance," said the departmental committee on railway accounts and statistics, 1909,<sup>80</sup> "from the point of view of comparison between the different companies, that there should be uniformity of practice among all the companies with regard to the keeping of accounts and statistics; that is to say, that every heading both in accounts and in the statistics, should bear precisely the same meaning in the case of all railways — should, in fact, be standardized." In this connection it may be recalled that one of the leading purposes for enacting the act of 1868 was to afford the means of a comprehensive comparison between the different companies, and that it was emphasized at the time that uniformity in practice was even more important than uniformity in the system of accounts.

In practice, however, the emphasis seems to have been placed in the wrong place. The forms of accounts themselves are uniform, but the manner in which these accounts are filled up differs among the different companies. Thus after reviewing the diverse nature of the capital accounts of some sixteen leading railways, the *Economist*<sup>81</sup> in 1882 stated that "it would appear to be wholly impossible to construct a statement, setting forth the actual money expenditure upon those systems — in many cases it would be difficult even for the companies themselves to construct such a statement." This financial paper further stated that the capital accounts of railway companies "were wholly unreliable for purposes of contrast with revenue, almost every company constructing its capital account upon a different principle." An English writer<sup>82</sup> also stated that "the first item of every railway balance sheet, which has yet been published to the world under state authority during the past seventy years, is the deliberate expression of an unmitigated falsehood. . . In ar-

<sup>79</sup> *Report of departmental committee on railway accounts and statistics*, 1909, p. 4.

<sup>80</sup> *Ibid.*, p. 5.

<sup>81</sup> *Economist*, March 4, 1882, pp 248-249.

<sup>82</sup> Fraser, *British Railways*, 1903, pp. 138-139.



iving at each of these balances, every conceivable irregularity . . . has been introduced, and has thereby received, not only the sanction but the approval of the state." This writer further said that "the account is not a balance sheet at all, nor is it even a very defective shadow or skeleton of one. It is . . . only the declaration of an untruth, in every instance, coupled with a list of a few of the most insignificant balances, which appear in a company's set of subsidiary book of accounts."

We are not prepared to agree with these strong terms. But the lack of uniformity in practice has recently attracted considerable attention. The departmental committee on railway accounts and statistics, 1909, gave much time to this difficulty, and the evidence taken by that committee goes to show that much needs to be done in making the uniform accounts really as useful as they should be. Indeed, this committee was convinced that unless some permanent machinery is established to define the scope of the various headings and to decide authoritatively from time to time the questions of detail which must arise in this connection, much of the value of the uniform system of accounts would be lost; and they accordingly recommended the formation of a standing committee, to be appointed by the Board of Trade, which should include representatives of the railway companies, to decide on points arising in connection with the preparation of the accounts and statistical returns.<sup>83</sup>

This departmental committee also recommended that "in the interest both of the railway companies themselves and of the general public" a system of yearly accounts and statistical returns should be substituted for the present system of half-yearly accounts. It further recommended that a uniform date should be adopted to close the financial year of all the companies, instead of permitting each company to adopt its individual date.

Furthermore, this committee took great pains in preparing a set of forms for financial accounts and returns,<sup>84</sup> with the aim of meeting the changed circumstances. Special effort was made

<sup>83</sup> For this and other recommendations of this departmental committee, see its report, pp. 1-6.

<sup>84</sup> Those interested in railway accounting will find their time well spent in examining the forms which are to be found in appendix I of the committee's report.

to exclude from the financial statements all matters of a purely statistical nature, thus making a strict division between the financial and statistical parts of the returns which did not exist in the statutory forms then in force.

A bill was introduced into the House of Commons in 1910, to give effect to most of the recommendations made in the report of this departmental committee, but was withdrawn in consequence of the dissolution of Parliament.

From the foregoing, we have seen that England endeavored to regulate the accounts of railways, to some extent, from the beginning, but prior to 1868, the companies were practically free to keep their accounts in their own way. The panic of 1867 and other events led Parliament to adopt a definite and uniform system of accounts twenty years before the United States attempted to regulate railway accounting in any definite way. England, however, made no further progress after her early start. Between 1868 and 1909 nothing was done to improve the old system, whose defects are many and obvious. During this time the United States made some remarkable advancements in railway accounting and its regulation. The measures adopted by the Interstate Commerce Commission toward the unification of railway accounting and statistical returns, which met with considerable opposition at first, are gradually becoming more popular and have unquestionably done much good. In fact the report and recommendations of the departmental committee of 1909 have been greatly influenced by the system of accounts adopted by the Interstate Commerce Commission. It is hoped that Parliament may soon see fit to give more serious consideration to these recommendations.

Since writing the foregoing, the Railway Companies (Accounts and Returns) Act of 1911 has been enacted. This act is based largely upon the recommendations of the departmental committee of 1909.

At a glance, one can see that the act and its forms of accounts are a decided improvement over that of 1888. The half-yearly accounts are changed into annual accounts, which experience has unquestionably proven to be the right thing. The forms are much more detailed and precise than the former ones. This is

especially true with regard to the revenue accounts. The introduction of the appropriation account is a decided improvement. The separation of the various expenses of operation and maintenance according to their nature are incomparably more distinct and detailed than those of 1886.

Another notable improvement is the equalization of the receipts and expenses of the different auxiliary operations. These auxiliary operations are of an entirely different nature from that of the general railway business. Chief among this may be mentioned form No. 11 which shows the receipts and expenses in respect of omnibuses and other passenger vehicles not running on the railway, No. 12, receipts and expenses in respect of steamboats, No. 15, receipts and expenses in respect of hotels, and of refreshment rooms and cars where catering is carried on by the companies. Each of these forms a distinct auxiliary service of its own kind and each service has its own head and staff. To separating the receipts and expenses of each service from those of the rest, not only the general manager of the whole undertaking may be better enabled to watch the whole situation and measure the efficiency of his men, but the individual heads of the different services will also be impressed more effectively with their responsibility. By separating the accounts of the different services and allocating the items of revenues and expenses to the respective officers responsible for the items, the company will do much to encourage economy and efficiency. With the same idea in view, wages are separated from costs of materials and office expenses. With the multiplication of the activities of a modern railway, such a system of segregation is imperative to successful management.

We must observe, however, that improved as it was, the act still has many defects which, in our opinion, could be advantageously avoided. First of all it may be mentioned that the leave given to end the financial year other than on the same date is not going to prove advantageous. To close the accounts on the same date is of fundamental importance to realize fully the advantages of a uniform system of accounts, which was one of the chief reasons for passing the bill. In any act, loopholes or exceptions to the general rule can hardly be expected to do more good than evil.



. Another defect, which we feel is a serious one, is the lack of any definite and detailed classification of the different items of accounts. It may be recalled that one of the chief aims of the departmental committee of 1909 was to secure uniformity. But we may be permitted to say that uniformity in accounting can not be easily achieved. The uniformity in the headings of accounts cannot be expected to insure the uniformity in what may be put under each heading by the different railways. While the accountants may be reasonably expected to put the most obvious items under the proper heads of accounts, they may quite as reasonably be expected to interpret the less obvious items — of which there are numerous in the enterprises of a railway — in different ways. To sustain this statement, it may be recalled that the Regulation of Railway Act, 1868, prescribed a form of accounts for all railways, yet at the time of the revision in 1913, following the act of 1911, there were innumerable differences between the accounts of one company and those of another. Although the present forms of accounts are far more detailed and specific than those of former years, there is nevertheless ample room for differences in the allocations. It is understood that the Standing Committee of Accountants, under the Railway Clearing House regulations, has prepared an annotated form of accounts, but it is not generally accessible to the shareholder or the general public. This, in the opinion of the writer, is a defect. The said annotated classifications or something similar to it should be prepared and promulgated by government authority which should be strictly followed by the railways and accessible to all interested parties, instead of keeping it under the veil of secrecy. Publicity and openness is the foundation of public confidence. Therefore it is publicity that government regulation should emphasize. In the long run, the railways and all other parties concerned will have everything to gain and little to lose by adopting such a policy of publicity. There seems to be considerable apprehension against such an open policy, but we feel the anticipated dangers are visionary rather than real. Given a fair trial, publicity will surely find its own favorable position in railway finance and regulation.

The above is only an inadequate observation. To give full consideration to the act would require at least a separate chap-



ter. As the act was passed after this monograph was written, the writer prefers to limit himself to this short analysis. It is recommended that every student interested in accounting will find it of great advantage to make a thorough examination and detailed comparison of the different forms of accounts as set forth in the accounts of 1886 and 1911.

## CHAPTER VIII

### STATE AUDITING AND INSPECTION

Parliament has required from the beginning an authentic audit of railway accounts by the railway companies themselves. It has also adopted elaborate, although ineffective, regulations governing such auditing by the companies. Thus in the Companies Clauses Act, 1845, numerous provisions were made governing the appointment and duties of auditors, etc.<sup>1</sup> The substance of these rules may be briefly summed up as follows:

Unless otherwise provided by the company's special act, the shareholders at the first meeting after the incorporation of the company should elect, either in person or by proxy, the prescribed number of auditors,<sup>2</sup> in like manner as in the case of the election of the directors. One of the auditors, to be determined in the first instance by ballot between themselves or in any other way suitable to themselves and afterwards by seniority, should retire at the end of the first ordinary meeting in each year;<sup>3</sup> and this annual vacancy should be filled by election at the same meeting. If no other qualifications were required by the special act, every auditor should have at least one share in the undertaking, and should not hold any other office in the company nor should he "be in any other manner interested in its concerns, except as a shareholder."

In regard to the duties and powers, the act stipulated that the auditors should receive and examine all the half-yearly or other periodical accounts and balance sheets of the company, which should be delivered to them by the directors at least fourteen days before the ensuing ordinary meeting at which these accounts, etc., were to be produced to the shareholders. They were also required either to make a special report or simply to con-

<sup>1</sup> 8 V. c. 16, ss. 101-108.

<sup>2</sup> If no number is prescribed, then two would be the number.

<sup>3</sup> Each auditor should be immediately eligible to reëlection.

firm the accounts, etc., submitted. Furthermore, these reports or confirmations together with the reports of the directors should be read at the meeting. In performing their duties, the auditors were empowered to employ at the company's expense such accountants and other persons as they might deem proper.

After the financial disaster of 1847, general proposals concerning the auditing of railway accounts were made, but no result was obtained from these attempts. In 1848 a bill was sent down from the upper house of Parliament, in which it was proposed that on the requisition of a certain number of shareholders who were ready to deposit £200 to meet the expense, the government should appoint impartial persons as auditors. The principal object of the bill was to protect the minority. It was urged that as the directors were elected by majority, if the auditors were also elected by the same majority, the check would be imperfect.<sup>4</sup> This measure was opposed however, on the ground that there was no demand for it by railway shareholders, that it is very questionable whether Parliament had any right to interfere with private business, and that one might just as well have an audit of the accounts of the Bank of England.<sup>5</sup> After considerable discussion in the House of Commons, it was finally rejected.

But the financial difficulties of the railways were too apparent to escape the attention of Parliament. A select committee was appointed by the House of Lords in 1849 to consider "Whether the railway Acts do not require amendment, with a view of providing for a more effectual system — audit accounts, to guard against the application of funds as such companies to purposes for which they were not subscribed, under the authority of the legislature."<sup>6</sup> This committee recommended that the right of inspection by shareholders of the accounts should be unrestrained: that all account, without exception, touching or relating to the receipts or payment of the company should be required to be produced; and that in case of refusal the statutory penalty should be extended from the bookkeeper to the governing body. The committee further recommended that the restriction upon

<sup>4</sup> Hansard, 98: 1143-1147.

<sup>5</sup> Hansard, 187: 1589-1590.

<sup>6</sup> *Report of Royal Commission on Railways*, 1867, p. xviii.

selecting auditors from among the shareholders should be repealed, and that the auditors should be empowered to call for all books and documents of the company necessary to elucidate not only the balance sheet, but the entire whole financial condition of the company. Moreover, the committee also urged that the government should name one auditor to act in conjunction with two auditors to be named by the company; and that if the government auditor differed in opinion from the company's auditors, his opinion should be recorded and published with the accounts for the information of the shareholders.

Bills embodying some of these provisions were introduced into Parliament in subsequent sessions, but none of them became law until 1868.

In 1851 the railway companies themselves brought in an audit bill, proposing to appoint a board of auditors elected by shareholders. The president of the Board of Trade objected to the proposal, on the ground that it would make the people judges in their own case and that such a tribunal lack independence and continuity. The last proposal made to the House of Commons up to 1867 was that the railway companies should elect a body of 300 persons, out of which five auditors should be chosen to hold their places during good behavior. It was proposed that the debenture holders should also take part in the election. No legislation, however, sprang from these bills.<sup>7</sup>

Thus up to 1857 the main objects aimed to be secured by Parliamentary action may be summed up as follows:<sup>8</sup>

(1) A clear and faithful record and account of all the financial transaction of the company.

(2) Authority for shareholders to inspect within certain fixed periods the company's accounts and to take copies or extracts.

(3) The appointment of auditors from among the shareholders to audit the balance sheets and accounts.

(4) The preparations of a scheme for the declaration of a dividend to be paid out of the profits of the company.

For the purpose of securing these objects, Parliament adopted the following rules.

Each company at its annual meeting should appoint two audi-

<sup>7</sup> Hansard, 187: 1589-1590.

<sup>8</sup> *Report of Royal Commission on Railways*, 1867, p. xliv.



tors, one of whom should retire annually but should be re-eligible.

The directors should deliver to the auditor half-yearly or other periodical accounts and balance sheets fourteen days before the meeting at which they were to be produced.

The auditors should receive and examine the same, and might employ at the expense of the company such accountants and other persons as they might think fit to assist them. They should either make a special report on the accounts or simply confirm them.

The directors should keep the accounts of the company. The books should be balanced at the principal periods, and thereupon the exact balance sheet be made up, which should exhibit a true statement of the capital stock, credits, and property of every description belonging to the company, the debts due by the company, as well as a distinct view of the profit or loss which had arisen in the course of the half year.<sup>9</sup>

The application of these provisions, however, was by no means free from difficulty. In practice, it was found that only a very short summary was usually laid before the auditors, who made an examination of it within a very limited time.<sup>10</sup> The daily transactions of railway companies were so numerous and intricate that the company was compelled to employ a staff of clerks and accountants proportionate to the magnitude of its business in order to examine and check every transaction as it took place. Since the manner in which every transaction was debited or credited depended upon the orders issued at the time when the transaction was made, the accounts could be checked efficiently only by a contemporaneous audit by an establishment employed in the same office, or by a complete transfer or transcript of the accounts, vouchers, correspondence, minute books, etc., to be examined elsewhere.<sup>11</sup> It was quite competent for the shareholders of any company to direct their auditors to investigate the accounts of the company to any extent they thought necessary after the accounts were rendered each half-

<sup>9</sup> *Report of Royal Commission on Railways*, 1867, p. xlv.

<sup>10</sup> *Economist*, May 16, 1857.

<sup>11</sup> *Ibid.*

year, but it did not seem to be within their power to direct any continuous, daily audit.

The Royal Commission on Railways, 1865-67, however, discovered that in many cases, especially as in that of the London and North-Western,<sup>12</sup> much could be done by the companies themselves for the purpose of ensuring a supervision and effective audit in the interest of the shareholders. At the same time, the commission pointed out that the powers conferred by the Companies' Clauses Acts were manifestly insufficient for this purpose, in case the directors were otherwise disposed.<sup>13</sup>

It has been shown in a previous chapter that under the system of independent auditing much abuse arose, especially in the declaration of dividends otherwise than out of net profits. It was a "striking fact," said the *London Times*,<sup>14</sup> "that . . . the auditors have never discovered or, at any rate, disclosed any one of the numerous cases of . . . false returns to the Board of Trade, payments of unearned dividends, charging of revenue expenses to capital, or any other of the various forms of 'cooking' accounts by which shareholders have been lured to ruin. . . ."

Therefore it was again urged that no legislation to repress the existing abuses would be of any avail without a system of government audit of the companies' accounts.<sup>15</sup> On the other hand the Royal Commission apprehended that it would not be desirable to impose upon the Crown the duty of auditing the accounts of joint stock companies and to certify to the shareholders the correctness of their own balance sheets, for in practice this would require a very large staff of officers as well as involve very serious responsibility, merely to relieve the shareholders of a duty which they could well perform for themselves by the election of competent auditors with adequate powers and sufficient remuneration. But this commission agreed with the select committee of 1849 that the restriction upon selecting auditors from among the shareholders should be repealed, and was also of the opinion that the auditors should be empowered to carry on a

<sup>12</sup> *Royal Commission on Railways, 1865-74, Appendixes E-F.*

<sup>13</sup> *Ibid.*, 1867, p. xlv.

<sup>14</sup> *London Times*, November 3, 1867, p. 4.

<sup>15</sup> *Report of Royal Commission on Railways, 1867, p. xlv.*

continuous audit and to call for all books and documents necessary to elucidate not only the balance sheet, but the whole financial position of the company.<sup>16</sup>

In commenting on the report of the Royal Commission regarding government audit of railway accounts, the *Economist* stated,<sup>17</sup> "These remarks seem to us full of wisdom. The attempt to separate the *accountant* from the *transactor* will fail, unless pursued into the minutest details. The man who does the business will give what accounts of it he pleases."

The general chaotic condition of railway finance which has been repeatedly referred to and the recommendations of the Royal Commission led Parliament to insert a clause in the Railway Companies Act, 1867,<sup>18</sup> giving to the shareholders a control through the auditors, and imposing on the auditors a responsibility which they never had before. This clause provided, as briefly stated in a previous chapter, that no dividend should be declared by a company until the auditors had certified that the half-yearly accounts contained a full and true statement of the financial condition of the company, and that the proposed dividend was *bona fide* due after charging the revenue of the half-yearly with all expenses which might be paid out of such revenue in the opinion of the auditors. The auditors were empowered to examine the books of the company at all reasonable times, and to call for such further accounts, vouchers, papers, etc., as they saw fit. They were also empowered to refuse to certify any accounts or statements of the company until the directors and officers of the company had produced the required accounts and given their assistance as far as they could. Furthermore, the auditors might at any time add anything to their certificates or issue to the shareholders independently at the expense of the company, any statement respecting the financial condition and prospects of the company which they thought important for the information of the shareholders.

Under the existing circumstances when every imaginable mystification was thrown over the declaration of dividends, when auditors never disclosed any of the numerous serious irregular-

<sup>16</sup> *Ibid.*, 1867, p. xlv.

<sup>17</sup> *Economist*, May 18, 1867.

<sup>18</sup> 30 & 31 V. c. 127, s. 30.

ities, and when general confusion seemed to hang over the financial affairs of the whole system, it was natural that the clause was highly valued at the time of its passage. It was expected, not without reason, that henceforth the auditors would no longer have any excuse, when actions were brought against them for neglect of duty.<sup>19</sup>

So far so good. But in the act a further provision, as referred to before,<sup>20</sup> was made to the effect that in the declaration of dividends and auditing of accounts, if the directors differed from the judgment of the auditors with respect to the payment of any expenses of the company, such difference should, "*if the directors desire it,*"<sup>21</sup> be stated in the report to the shareholders, "and the company in general meeting may decide thereon, subject to all the provisions of the law then existing, and such decision shall for the purpose of the dividend be final and binding." This provision proved to be a loop-hole through which the expected usefulness of the system of auditing, as shown in a previous chapter, was practically nullified. . . .

As the systems of auditing adopted in 1845 and 1867 both failed to be effective enough to restore confidence, it was suggested that a committee of investigation might be effective in settling the existing difficulties. But it was at once comprehended that the nature and composition of such committees of railway companies would prevent them from doing anything effective. They could be composed in all kinds of ways, they could lay down every species of doctrine, and they could accept as well as deny all sorts of statements. The investigation of railway affairs was recognized as a difficult task even for an expert, and the task wholly surpassed the power of any untrained man.<sup>22</sup>

Moreover, experience had taught that a committee of investigation was almost never both able and impartial. All the competent people in a railway company, it was told, took a side either for the directors or against them, and they would go into the committee with a bias in their minds. Thus, in practice, the

<sup>19</sup> London Times, November 13, 1867, p. 4.

<sup>20</sup> Cf. *supra*, p. 216.

<sup>21</sup> Italics are mine.

<sup>22</sup> Economist, December 21, 1867.



reports of committees of investigation were either questioned or denied. They often would "not settle so much as they unsettle. . .," and they would "only add a new disputant and a new set of contested figures" to the controversy.<sup>23</sup>

Therefore, it appeared that the true remedy for the lack of confidence was an independent audit of all the railway accounts.<sup>24</sup> The government was urged to exercise what philosophers called the "function of verification." The railways, by which alone people could travel and traffic could be conveyed, were regarded not only of sufficient magnitude to justify the action of the government, but so important that the state would be to blame if it did not act. The government was held as the only uniform authenticator possible — the only one which could apply the same measure with the same weight to all railways in the country. The shareholders themselves were reported to be desirous of having a system of government audit and were ready to share the expenses. "An optional audit of petitioning railways is," said the *Economist*,<sup>25</sup> "both on grounds of theory and reasons of practice, the sole outlet from the existing difficulty." In fact, during the early part of 1867 several proposals were presented to the Board of Trade, which, though varying much in detail, contained the common recommendation that an auditor should be appointed by that department to audit railway accounts.<sup>26</sup> Consequently in the Regulation of Railways Bill of 1868, provisions were made for a more effective system of auditing and inspection. When the bill was introduced, it was generally conceded that a system of government audit of railway accounts would do much toward restoring confidence. But it was also recognized that in this very matter of restoring confidence lay the danger of the system. The public might place too much faith in the system. They might be led to believe that the soundness of a company's proceedings and finance were certified and even guaranteed by the government. Again it was recognized that it was by no means an easy work for the government to audit efficiently and effectively the accounts of the

<sup>23</sup> *Ibid.*, December 28, 1867.

<sup>24</sup> *Ibid.*,

<sup>25</sup> *Economist*, December 21, 1867.

<sup>26</sup> Hansard, 187: 1590.

railway companies. An audit of business "from without" must be such as would be of avail against directors who desired to deceive. The details which auditors in such cases would have to look into and the minuteness of the evidence they would have to inspect, it was urged, could hardly be properly appreciated by any but those who had practical experience in such matters.<sup>27</sup>

On account of the possible dangers and the great difficulties which might arise from a system of government audit, it was suggested that railways themselves might constitute a central board of audit, and that they might for that purpose make use of the existing machinery of the Railway Clearing House.<sup>28</sup> Such a board under the control of the railways themselves, it was believed, would be less likely to give false security than an audit under the government.<sup>29</sup>

The most important question which arose during the discussion, however, was that as to what should be the scope of the audit. An ordinary audit, such as the mere comparison of payments and vouchers, was an operation which did not give the protection which shareholders sometimes fancied it did. On the other hand it did not appear politic to interfere too much with the policy of railway companies. If the government should give guarantee to all the railway accounts presented to the Board of Trade, the various companies of other pursuit might make similar demands.<sup>30</sup>

After much debate, provisions were made, in the act of 1868, to repeal the restriction imposed by the Companies Clauses Act, 1845, that auditors should be shareholders, for the reason that it had proven desirable in some cases to have independent auditors who should be entirely unconnected with the company.<sup>31</sup>

But what was entirely new and of great importance was the provision for the appointment of auditors by the Board of Trade. According to this provision, the Board of Trade, upon application made in pursuance of a resolution passed at a meeting of the directors or at a general meeting of the company,

<sup>27</sup> *Economist*, May 18, 1867.

<sup>28</sup> Sir Geo. Findlay's book on the *Working and Management of an English Railway* has an excellent treatment of the Clearing House.

<sup>29</sup> Hansard, 187: 1591.

<sup>30</sup> *Ibid.*, 191: 1538.

<sup>31</sup> Hansard, 190: 1858.

might appoint an auditor in addition to the two auditors of the applying company, and such government auditors were to be paid, by the applying company, a reasonable remuneration prescribed by the Board of Trade. The government auditor was to have the same duties and powers as the companies' auditors; and the company might declare a dividend only when the majority of these three auditors had certified that such dividend was properly earned according to the rules laid down in section 30 of the *Railway Companies, 1867*.

It was regretted, however, that the act provided for only one government auditor in each case where the company had two. As a majority was to decide when a dividend might be declared, it was apprehended that the official auditor might be overruled. Then he would only have the liberty, according to the act, of printing his protest at the expense of the company. Even admitting that the possibility of such a protest would be an obstacle in the way of improper dividends and that the government auditor might receive more consideration than those of the company, nevertheless it remained a fact there were many disputes in which the shareholders and the capitalists might be indisposed to give the government auditor their proper support.<sup>32</sup>

It was also urged both in and out of Parliament<sup>33</sup> that auditing alone was not sufficient to prevent disorders in railway finance, for frequently the books of unreliable companies were well kept. The root of the evil was in the charging of the various items in the books.

Another important provision contained in the *Railway Regulation Act of 1868* was that in case there were any difference of opinion between the auditors, then it should be imperative, instead of permissive, as was originally provided in the bill, that the dissenting auditor should issue to the shareholders, at the cost of the company, a statement containing the grounds on which he differed from his colleagues and prepare such other statements respecting the financial conditions and prospects of the company which he deemed material for the information of the shareholders.<sup>34</sup>

<sup>32</sup> *Economist*, March 21, 1868.

<sup>33</sup> Hansard, 190: 1960, and *London Times*, November 22, 1867, p. 6.

<sup>34</sup> Hansard, 190: 1962.

To strengthen the position of the securities-holders, the act further provided <sup>35</sup> that the directors, or two-fifths of the holders of shares, stocks, or preference shares, or half of the creditors, might apply to the Board of Trade to appoint inspectors to examine a company's affairs, in case they produced evidence to satisfy the Board of Trade. In so applying to the Board of Trade the applicants, however, were required to meet all expenses incurred in connection with the inspection, unless the Board of Trade should direct the same or any portion thereof to be borne by the company, and they might also be required to give security for the payment of such expenses.

The government inspectors were empowered to examine all the company's books, documents, etc., as well as to administer oath; and the directors, officers and agents of the company were required to produce, for the examination of the government inspection, all such books and documents. The latter were also required under penalty <sup>36</sup> to render to the government inspectors all reasonable facilities for discharging his duty.

Upon the conclusion of the examination, the inspectors were to report their opinion both to the Board of Trade and the company, the latter being required to print and deliver a copy of the same to the Board of Trade as well as to every applicant who held any securities of the company.

Furthermore, the companies were authorized to appoint, on their own accord, at any extraordinary meeting inspectors for the purpose of examining into the company's affairs, and such inspectors of the company were to have the same powers and to perform the same duties as those appointed by the Board of Trade.

This system of inspection was adopted for the purpose of helping the shareholders to bring into their proper light without involving the assumption of any serious responsibility by the government.<sup>37</sup> Such inspection of private business did not establish any new principles, as a similar system had been intro-

<sup>35</sup> 31 & 32 V. c. 119, ss. 6-10.

<sup>36</sup> In case any director, officer, or agent of the company should refuse to produce any books or documents, or to deny the facilities necessary for the inspection, he should be held liable to a penalty of £5 for every day during which the refusal continued. See sections 8 & 10, 31 & 32 V. c. 119.

<sup>37</sup> Hansard, 190: 1958.



duced by the Companies Act of 1862, in the case of ordinary joint stock companies.<sup>38</sup>

The defect of this system of government inspection, as was pointed out at the time,<sup>39</sup> was that the inspection was contemplated only in extreme cases. The limitations placed upon the application for government inspection were said to be too cumbersome. It was urged that since the applicants were required to give security for the cost of any government inspection, Parliament could have well afforded to require the consent of a smaller proportion of the shares or debentures of a company for any inspection.<sup>40</sup> It would be almost impossible to make any such inspection if a directorate objected to it. The demand for an examination of a company's affairs, according to the provision, would be a penal proceeding which the directors would always resist. It would be made, therefore, only when a railway came to grief, while what was needed was a government inspection when the soundness of the company was not suspected and not merely an inquiry when troubles had taken place.

Moreover, in spite of the great responsibility placed upon the Board of Trade, no principle was laid down to guide that body, as to what reasons were sufficient to justify an inquiry. Neither was there any specific rule as to the kind of evidence on which it should insist. Thus, it was apprehended that "the act might be wholly unworkable if the Board of Trade were judicial and exacting, and looked too narrowly into *prima facie* cases."<sup>41</sup>

It was, however, conceded that the provision for the appointment of government inspectors would generally be of some use in that the possibility of a searching inquiry would have much indirect influence over directors.<sup>42</sup>

In spite of its defects, however, the system of government audit and inspection was recognized to be a forward movement in the regulation of railway finance. The holders of the securities of the companies were at least afforded a chance to get government auditors and inspectors to act with their own, thus bringing pressure to bear upon the directors. All good compan-

<sup>38</sup> *Ibid.*

<sup>39</sup> *Economist*, August 29, 1868, p. 992.

<sup>40</sup> *Ibid.*, March 21, 1868.

<sup>41</sup> *Ibid.*, August 29, 1868, p. 992.

<sup>42</sup> *Economist*, March 21, 1868.

ies would gain by taking advantage of the provisions of the act; and the "fashion" being once established might compel companies to follow the example. The discredit arising from shutting out the light might be even worse than the discredit of the unwelcome truth itself. Although the system of government audit and inspection has been resorted to only occasionally, it appears to have proven beneficial. Parliament has not only retained the system of impartial audit, but has given it special emphasis.<sup>43</sup> Indeed, as said a member of the New York Bureau of Economic Research in 1901 before the United States Industrial Commission,<sup>44</sup> the English auditors are independent and form "almost a fourth body—a fourth cog in the wheel of government." The fact that the government has the power to appoint its own auditors to audit the accounts and to appoint inspectors to examine the affairs of the companies seemed to have considerable influence in preventing railway companies from many irregularities. Thus it appears that the mere reservation by the government of certain important privileges may often prove quite effective in checking misconducts, even if such privileges are seldom made use of.

It may be added that as years progressed, things became more settled to normal or "standard" conditions. While the accounts of some companies do not give as much as is desirable, they are generally known to be true and straightforward, and seldom make any attempt at dishonest concealment of vital points. The general practice is that they are audited half-yearly. Besides appointing professional auditors on behalf of the shareholders, many companies have an audit committee appointed for the latter body, which meets regularly for the purpose of supervising the accounts. Perhaps these measures taken by the companies may to a certain extent explain why the privilege given by the government for appointing government auditors has not been taken advantage of by the shareholders.

<sup>43</sup> In the "saving" clause of the Coventry Railway Bill, 1910, as to general Railway Act, the only two topics which received special emphasis were the impartial audit of accounts and the revision of the maximum rates. See sec. 43, p. 17 of the Coventry Railway Bill, 1910.

<sup>44</sup> *Report of the United States Industrial Commission, 1901, Vol. IX, p. 93.*

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UNIVERSITY OF ILLINOIS STUDIES  
IN THE  
SOCIAL SCIENCES

VOL. VII

SEPTEMBER, 1918

No. 3

BOARD OF EDITORS

ERNEST L. BOGART

JOHN A. FAIRLIE

LAURENCE M. LARSON

PUBLISHED BY THE UNIVERSITY OF ILLINOIS  
UNDER THE AUSPICES OF THE GRADUATE SCHOOL  
URBANA, ILLINOIS



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# The American Municipal Executive

RUSSELL McCULLOCH STORY, PH.D.



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## CHAPTER I

### THE EXECUTIVE OFFICE IN AMERICAN CITIES

For half a century popular interest in city government in this country has centered in the person and office of the municipal executive. Both in matters of policy and of administration he has commanded confidence to a far greater degree than has the organ of legislation, the council. The result has been the rapid decline of the latter and a corresponding growth in the power and position of the executive. Not even the newer forms of municipal organization have successfully stemmed the drift toward executive domination. Mayors, commissioners, and managers continue to attract the public interest in their plans and activities while councils and commissions are passively tolerated as necessary but unworthy of sustained attention.

The weakness of municipal government in this country has long been bound up with the condition of the municipal council, tho obviously not with that alone. The weakness of the legislative organ as an object of citizen interest has seemed to be fundamental. Whether due to bicameral organization, to the council's lack of power, to legislative interference, to the ward system, to the long ballot, to the executive veto, to traditions of a corrupt and inefficient past, or to these and other reasons in combination, the condition is one that apparently is of more vital concern and is much more difficult to solve than is any deficiency in administration. The American city seemingly has not devoted to this situation the attention it deserves. Neither home rule, commission government, manager government, the short ballot, the abolition of wards, nor any of the many other reforms of recent years have revived the municipal council to its alleged rightful place in the mind of the citizen or in the conduct of public affairs. The executive has resisted all the forces which would normally have operated to restore the council to its prop-



er power and prestige, and to subordinate administration to its supervision and control.

The drift toward executive domination has been noted in many fields of government in recent years. Presidential authority in our national system increasingly forces Congress to do its will, and executive usurpation is a frequent subject of protest on the floors of the national legislature. The growing authority of the British cabinet over the house of commons and the apparent inability of the latter to maintain the substance of the parliamentary system points to the triumph of the executive where the legislative organs have been touted as omnipotent. The breakdown of control by the council is apparent in Chicago where council government has made its last stand in the larger American cities. Meetings of commissions in commission governed cities are not objects of widespread public interest; indeed, the very opposite is notoriously the case. The city manager threatens to swallow up the commission or council which selects him, and the meetings which hear his reports and approve his recommendations do not call forth those discussions of public policy or those criticisms of public administration which reflect a vigorous and healthy legislative life. Whether one prefers it or not, the expanding activities of modern government have reduced municipal councils no less than national and state legislative organs to a condition of dependence upon the executive. The predominance of the latter in American city government is the outstanding fact of municipal organization and operation.

Despite the multiplied demonstrations of the incapacity of modern organs of legislation to deal with the problems of modern government, orthodox opinion continues to cling to the notion that the council should be the controlling factor in municipal life. The fact that it is not dominant and probably will never again be in control has not been fully appreciated. What is to take its place is being determined by processes not subject to the logic of theorists who worship the old order. Rather, there is being worked out a popular forum which wisely or unwisely assumes the responsibility of making decisions on questions of public policy and which directly controls the executive to whom it commits administrative affairs. Councils and other legislative bodies may retain the shadow of authority, may still fill in the details where the public at large has not voiced its will, may even

select the administrative expert, but the responsibility of both council and executive is immediately to the people and every wise executive recognizes this fact.

If, then, there is being evolved some new form for the expression of democracy in which the people and the administrative agencies are to constitute the most important factors and the legislative organs are to be a less consequential feature than in past municipal history, it is the part of wisdom to take stock of the executive office in American municipalities today. The public can intelligently determine its course only as it is familiar with the situation now existing in administration. Too long the processes of development have gone on without an adequate analysis of this situation, with the result that extravagant claims have been made for this or that type of executive organization and for one or another method of supervising administrative agencies. It is in the hope of supplying in part such a survey of the office of the municipal executive that this study is offered to a public already aroused to progressive activity in municipal affairs.

There are over two thousand American cities in which the municipal executive is called by the title of mayor; in approximately four hundred others he is known as president or mayor-commissioner or as commissioner; and in less than one hundred municipalities he is styled the city manager. The mayoralty obtains in all but half a dozen of the larger and more important cities. It is the oldest of the three offices and until the opening of the twentieth century was found in practically all American cities. The history of the mayor-commissionership and of the commissionership lies wholly within the present century and that of the managership within the last decade. These facts impart significance to the figures indicating the extent to which the newer types of organization have been adopted. The favor with which they have been greeted demonstrates the dissatisfaction with the old order and the active character of the search for a municipal constitution adapted to the twentieth century city. Such a constitution must recognize two facts, viz., the dominating position of the executive organ, and the immediate supervisory authority of the municipal electorate in administration. The outlook for a restored council is not promising and to those who long for such a revival must appear positively discouraging. At best it

will but share in the important decisions of public policy, the executive and the electors playing the influential and decisive parts. It may develop into a sort of electoral body to choose the municipal executive; but as in school administration the executive, when chosen, will be actually responsible to the people and will largely dictate the council's decisions.

The actual and the relative importance of the executive office increases with the concentration of population in urban centers. The heads of municipal administration often preside over populations aggregating hundreds of thousands and in some cases millions. Three cities in this country rank higher in population than do twenty-five of the states. Twenty-five cities have a higher population than do two of the states. Nine cities exceed and eleven states fall below the half million mark. The office of municipal executive is therefore frequently a commanding one and vies in dignity and salary, tho not in authority, with the governorship.

The spread and development of local autonomy undoubtedly contributes to the importance of municipal office holding, and in this accretion of strength the executive shares. While it may be truly urged that the relative importance of municipal chief magistrates does not now appear to be much greater in the home rule states than in others, it should be noted that the greater cities are almost all located in the states where municipal home rule does not obtain. One can hardly conceive of home rule for New York City, Philadelphia, or Chicago without an accompanying increase in the power and influence of the executive authority. The electorate, however, will absorb the major portions of the new strength conferred by a thoro-going regime of local self-government. The so-called revival of the council is more apparent than real.

Among recent developments which indicate a growing importance for the office under review there should be noted the appearance of an executive consciousness on the part of the incumbents. This is shown in the formation of leagues, associations, and similar organizations for the study of municipal problems. Many of these organizations are the offspring of earlier associations of the mayors. Their prominent and active members are principally executives. National and sectional conferences of mayors have been held, one for the consideration of public utility problems,

the others dealing prominently with the question of national preparedness. The city managers have a national organization and hold annual conferences. The immediate results of these developments are not of such momentous importance, but the recognition of a common interest in municipal and other problems of the day and the effort to approach them semi-professionally in a spirit of mutual helpfulness are highly significant of the place of the municipal executive in American life.

The mayoralty is the most common and the most important type of municipal executive organs. The mayor represents the municipality in its dealings and relations as a corporate entity. On behalf of the city he welcomes its distinguished visitors and extends greetings to conventions and assemblies which gather within its bounds. He delivers memorial and other addresses on occasion, opens local festivals and pitches the first ball of the baseball season. The mayor is marked for responsibility. The office is immune from many of the weaknesses which appear in every executive unit made up of more than one person.

Legally it usually lacks that basis in fundamental law which is supplied the chief executive offices in state and nation; its existence depends upon the will of the state legislatures and its constitution and powers are defined in statute law, municipal charters, and council ordinances. On the other hand the term mayor is well worked into the political conceptions of the American public and even where changes of a radical nature are taking place in municipal executive organization, the title often remains to indicate the one who represents the unity, dignity, and authority of the city.

The movement toward mayor government which was so conspicuous twenty-five years ago has subsided during recent years. This movement had its origin and basis in the stress which modern municipal problems placed upon the administrative organization of the earlier council system. For the handling of these problems there was necessary the directive force of some single agent, together with the greater freedom of action and ease of control which administrative unity made possible. The development of the mayoralty followed, but it proved to be neither uniform nor adequate.

The forces which produced the mayor system are more potent today than ever before. They have, however, taken more varied



methods of attaining the desired administrative goal. Thus it is that commission government and manager government have come into being, and are successfully contesting with the mayor system for the public favor. Both of these newer forms have made spectacular growth and both have achieved remarkable results. In the commission system the mayoralty remains, tho largely shorn of its powers. In the manager form the mayor usually disappears, tho in some cases remaining to perform the distinctively political as differentiated from the business and administrative functions of the executive.

The evolution of the commission plan is proceeding steadily and its application in larger cities will produce features and results not now foreseen. In its impact upon mayor government it has undoubtedly stimulated and purified the latter and has, perhaps, contributed to its permanence and stability. At the same time it has experienced a vigorous reaction in the strengthening of the mayoralty, in the demand for greater centralization of administrative authority and responsibility and for the separation of legislative and executive functions, in the increasing need for expert administrators, and in the appearance of the manager plan. It is significant also that in the commission form the mayor-commissioner has a more favorable position than did the mayor of a century ago. All the factors which have aided in creating the mayor of today are either present to enhance that position in commission government or are likely to appear as the commission plan undergoes the test of metropolitan conditions.

In the manager plan the attempt to restore the municipal council and the emphasis upon administration by experts are features that constitute a sharp challenge to both the mayor and the commission systems. The executive is apparently subordinated to the council. Nevertheless, the history of government in democracies evidences a tendency toward executive leadership. Indeed, in our modern life with its large governmental constituencies and its complex and highly technical problems it is doubtful if any adequate form of municipal organization can be devised which will assure efficiency and at the same time deny executive leadership. There are those who believe that the city manager, tho nominally elected by the council, will in fact become the dominating factor in the regime of which he is a part, and that the council will sink into practical subordination. The

manager plan, on the other hand, is held to make possible a vigorous and responsible council operating in conjunction with a trained and wide-awake executive, chosen because of his fitness, and clothed with ample authority to control and direct the administrative forces of the city. One may gauge the importance attached to the coming of the manager form of municipal organization by the universal interest in its development and achievements. It is also significant that this form has supplanted the mayor plan in the "model charter" prepared and presented by a committee of the National Municipal League in 1915.

With the exception of the managership the municipal executive office is largely devoid of standards indicating the fitness of the holder for the performance of his duties. The mayoralty and the mayor-commissionership alike are open to the good, bad, and the indifferent, and in almost all cases to the untrained and to the politically ambitious. The establishment of high standards and traditions in the municipal service generally depends in no small degree upon their establishment first in the office of the chief executive. The prompt achievement of the latter task is one of the problems before those who would retain the one or the other of the above forms of organization.

It is not to be expected that the type or position of the municipal executive office will ever become uniform thruout the country. There is already considerable diversification in organization and practice with respect to the office, and this is true of each of the three principal systems. It is probable that this diversification will continue, especially as the principle of home rule for cities comes to fuller definition and acceptance and permits of experiments designed to meet the political conceptions and conditions of the communities undertaking them. The progress that has been made as a result of such experiments has nowhere been more conspicuous than in the recent history of the municipal executive. Not a little of the strength and virility of the commission and manager plans is due to the freedom and ease with which cities have adapted them and developed them thru local self-government. The experiences of the past and the experiments of today may confidently be expected to stimulate and hasten the evolution of more perfect organs for executing the public will and administering the public business.

## CHAPTER II

### THE HISTORICAL DEVELOPMENT OF THE MAYORALTY

The term "mayor" is an ancient one. Originally it comes from the Latin "magnus," being the comparative of that adjective, but having the form "mayor." It does not appear to have been applied to the domain of city government by the Romans, tho an officer called the "prefect" seemed to have exercised functions much similar to those we commonly associate with the office of mayor. The term gradually acquired political significance in the kingdom of the Merovingian Franks. The chief officer of the royal household was the major domus or mayor of the palace. In the degeneracy of the Merovingian rulers came the opportunity of the mayors—they became the chief officers of state and finally usurped the royal title itself.

#### *English Antecedents*

The use of the term mayor became general wherever the Frankish influence was felt. Today forms of the word are found in Germany, Portugal, France, Great Britain, and some of the British Dominions. In Germany the "meier" exercises functions similar to a bailiff, tho as a steward he may be a purely private functionary. In Portugal the "maior" or "mayor" and in France the "maire" are titles to which are attached a distinct political significance. It is in England that the immediate antecedents of the American mayor are to be found. Its beginnings there are not fully known, being wrapt in the obscurity that hides much of the origin of things in England. It is known that the office existed *de facto* before it was recognized *de jure* in the municipal charters. It is generally accepted by the authorities that there was no mayor in London prior to 1189, that there was a mayor by 1193, and that the title was a Norman importation. Norman influence in London was very strong and there was a

tendency to copy French titles. The use of the term "mayor" to designate the chief officer in cities had been extant in northern France some years before 1189. The application of the title to the portreeve, bailiff, or head officer of English cities and boroughs certainly began under the Normans.

By 1216 some of the most advanced among the English towns had succeeded in obtaining the charter right to elect their mayors. This early emergence of the mayoralty gave it strength during the following centuries when the organization of English municipal government was being definitely shaped, tho the permanency of the title does not seem to have been assured until at least the late thirteenth or early fourteenth century. While Edward I, in organizing his parliament, seems to have recognized the boroughs, he made the sheriff and not the mayor the returning officer, thus indicating that no borough constitution of an independent character or fixed type had as yet come into existence.

The standard form of organization in municipalities was one of the products of the fourteenth and fifteenth centuries and was incomplete until the realization of the legal personality of the municipal corporation. By the close of the fifteenth century, however, the organization of municipal government had taken permanent shape and the mayor was the chief magistrate. He was one of the close corporation which the charter either created or which custom had come to recognize, following some early and successful usurpation, as having the right to exercise charter powers. The general powers of these corporations differed according to the respective charter terms and local practice. But the form of English municipal government became fixed and remained practically unchanged until long after the transplanting of English stock and ideas to the shores of the New World.

In this early period of municipal history the obligation of office holding was not unknown, and the custom of compelling the one chosen as mayor to serve in that capacity was well established. In the Cinque Ports and probably elsewhere a refusal was punished by the demolition of the home of the delinquent. In the case of London and other chartered cities the election of the mayor was an annual affair, tho the incumbent was often retained in office, and was sometimes reëlected for many terms. The mayor was "presented" to the king in the procedure prescribed by the charters, and this was done following each elec-



tion; and upon such presentation, the mayor-elect vowed his loyalty to the ruler.

In his political capacity the mayor was from the first an officer of no small consequence. The mayor of London was named as one of the committee who were to enforce, if necessary, the Magna Charta against John. The Londoners are quoted as announcing that "come what may, they should have no king but their mayor." The mayor undoubtedly brot considerable standing and prestige to the office, for he was one of the city's barons or chief men. London's first mayor was a leader in the efforts to secure charter privileges. Of the details of his power we have little exact knowledge, but there is no reason to doubt that he exercised considerable control in the government and administration. In the oath taken by the common councilor he agrees not to leave the council without the mayor's permission. The mayor as chief of the aldermen presided at assize, pleas, and hustings. In the communal oath of 1193, as in that of the London freeman of today, one of the vows taken is that of "obedience to the mayor," a phrase which probably meant more in that day than in this. One of the titles by which the corporation of London was known in the late thirteenth century was "The Mayor and the Commonalty of London."

The developments of the fourteenth and fifteenth centuries made the mayor the most prominent official in municipal life. The early charters of the fourteenth century often made provision for the election of the mayor by the burgesses; but during the fifteenth century there was a marked contraction of the electorate, and the mayor usually came to be chosen by the council, consisting of the aldermen and the common councilors. In administrative and in legislative matters affecting the city he occupied a position of authority, one that is still reflected in the seventeenth and eighteenth centuries. In the dealings of the municipality with the king and with the outside world in general the mayor, as the head of the corporation, stood foremost. Of course London was somewhat in advance of the other cities and her influence was widely felt in the organization and development of the municipal constitution both in its chartered and its customary forms.

The history of the mayoralty from 1600 to the American Revolution, at which time the direct influence of English local insti-

tutions in American life may be deemed to have ceased, is not easy to trace. At the opening of the Tudor regime there were between one hundred and two hundred chartered towns and boroughs organized on the basis of the typical municipal constitutions of mayor, aldermen, and common councilors, tho there were numerous variations in detail. The tendency toward oligarchic control by this governing group was a feature of the sixteenth and seventeenth centuries. The body of mayor, aldermen, and common councilors became an ever narrowing one and the drift to the "close corporation" was steady. In the later seventeenth century the policy of the Stuarts was openly antagonistic to the continued existence of the old town charters, and they were forfeited and surrendered in large numbers under pressure from the crown. Even London sank so low as to become a victim of this movement and the slight opposition to the forfeiture of its charter shows the depth to which the spirit of local self-government had fallen in England. Royal interference and direction and local oligarchies became dominant factors in municipal life. The mayoralty suffered no little impairment of its former position of leadership, tho remaining as an important factor in municipal life.

There was a recovery in municipal government after the fall of the Stuarts but the recovery can hardly be said to have been in the direction of constructive reform. There is rather a transfer of the control over municipal life from the crown to the landed aristocracy. There were no important developments in the municipal constitution except as the process of petrification may be deemed important. Of new life there was a plenty during the eighteenth and nineteenth centuries, but in municipal government it was unable to break thru the old shell until 1835. Therefore, from the standpoint of municipal constitution, the period is properly considered to be one of stagnation, if not one of positive decline. From the standpoint of the mayoralty, as will be pointed out later, it was also one of decline, a tendency which culminated when the mayoralty lost out almost entirely in the reforms initiated under the Municipal Corporations Act of 1835, an act which established council government in English cities.

It was during the seventeenth and eighteenth centuries that the municipal institutions of the English were transferred in

spirit, in nomenclature, and in form to the shores of America. It is important, therefore, that the English mayoralty of those centuries be more carefully examined with a view to ascertaining how far it served as a model for the municipal executive in the American colonies. Both the title and the position of the mayor in the English municipal corporation were matters determined by the borough charter. This instrument conferred upon the executive considerable tho somewhat indefinite powers extending to every feature of municipal borough life. In legislation he presided over all assemblies of the corporation. In judicial matters he was the chief magistrate and clothed with all the powers of a justice of the peace, an office which was then more important than it is in America today. He also presided at the borough quarter sessions, and held whatever courts the borough maintained, either in the capacity of sole judge or jointly with the recorder. His judicial duties included service as coroner for the borough and a number of quasi-judicial functions such as those of escheator, or keeper of the borough gaol. The executive and administrative authority of the mayor reveals the chief source of his power, notwithstanding the wide judicial authority of a local nature which he possessed. His appointive power was extensive, sometimes including all but the few offices specified in the charter. He was empowered to regulate trade, administer public property, manage coöperative and quasi-public enterprises, and to enforce the laws. In this latter capacity he rose to a commanding place in municipal life. The mayor was the "lord of the town;" he was "almost omnipotent;" the honor and supreme authority of the seventeenth century city "subsisted in his person;" he enjoyed the "first voice in all elections and other things that concern(ed) the town." Despite the steady decline in the mayoralty in England during the eighteenth century due to the slow development of new forces within the cities, a great part of his authority survived until the reform legislation of 1835.

With respect to their methods of choosing the head of the corporation or mayor, English municipal corporations, during the seventeenth and eighteenth centuries, may be divided into three main groups. By far the largest proportion — from two-thirds to three-fourths — were close corporations and the mayor was elected by the members of the corporation from among their own

number. The second group comprised those in which there was a restricted electoral power conferred upon the freemen or burgesses, the members of the corporation retaining a strong control either thru power of nomination or thru exclusive eligibility to the mayoralty. In the third group there was a real approach to municipal democracy, the freemen electing the councilors and participating in general assembly in the nomination of the mayor or chief officer of the corporation; but the final choice of the latter was usually left to some smaller body, such as the council.

The English custom in respect to mayoral salaries was not materially different then from what it is today. There were, it is true, certain nominal allowances and perquisites. "But it may safely be assumed that even the largest of these allowances never did more than cover the out-of-pocket expenses of the holder of the office, and seldom sufficed to meet the innumerable charges . . . ." "The Headship of the Corporation, whatever its nominal emoluments, was in fact, in 1689 as in 1835, always an honorary office of considerable personal labour, rewarded only by the prestige, power and social consideration universally conceded to the Chief Magistrate of the Borough." And there are cases on record in which the boroughs adopted during this period the principle of requiring free service of their officers, the mayor among others.

### *In Colonial Times*

When one turns from the position of the mayoralty in the mother country to consider the place which it held in the English colonies in America, a contrast is at once apparent. The reproduction here of the close corporation, the custom of annual selection, and even of the studied attempt to copy after the English model in the establishment of the mayoralty did not suffice to prevent a marked differentiation. The strength of the office in England, whether due to charter custom, or the personal standing of the mayor or to all three in combination, was to no small degree lost in the atmosphere of a new country, owing to the leveling conditions of pioneer life, and to the tendency of transplantings generally to manifest new characteristics and to follow new lines of development. The effort to reproduce the English mayor was partly a conscious one, for in the Elizabeth, New Jersey, charter it was provided that the mayor should have



charge of the borough "in as full and ample manner as is usual and customary for other mayors to have in like corporations in our realm of England." The gradual introduction of English "methods of government" was one of the prudent achievements of Colonel Nicolls according to William Smith, who made this comment in connection with the incorporation of New York under the care of the mayor, five aldermen, and a sheriff. No doubt the colonists imagined that the English mayor was being reproduced in the colonies. The colonial mayors, it is true, often received considerable prestige thru their appointment by the provincial governors, as in New York. They thus represented the general government of the colony in local affairs. The mayors were frequently reappointed, some serving for ten years. In this way they were able at times to gain no small amount of personal influence. But in general the powers of the corporation were absorbed by the municipal council. The colonial mayor was relatively insignificant in both legislation and administration as compared with his English fellow. He was in a real sense the servant of the council.

If we view the position of the American mayor during the period prior to 1796 from the purely legal point of view we find that the standing of the office more nearly approached uniformity during its early history than it has at any time since. Its development has followed very diverse lines in different cities and general uniformity in legal status is now beyond realization, even tho it were desirable. But in the colonies the mayors were all subordinate to their respective municipal legislatures. Tho the detail varies slightly the general picture presented is always the same. Even the judicial powers which were employed to raise the mayor to such prominence in English boroughs were allowed to lie dormant in the colonies and today are of little consequence.

The position of the American mayor before 1796 may be summarized as follows:

(1) The title was employed by municipal corporations in New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Maryland and Delaware; altho it was first provided for in Maine, yet, except for Boston's appropriation of the title after the Revolutionary war, it had not been in vogue in New England before this date. The title of the office which in

New England corresponded to the mayoralty was "moderator."

(2) The charter position of the mayor was not strong. He had few powers other than minor ones. He was legally a part of the council and often subordinate to the governor, and enjoyed, therefore, no large independence.

(3) He was an officer of some prestige socially and politically, depending largely on his personality.

(4) There was a marked absence on the part of the mayoralty of discretionary activity in matters of police, sanitation, and morals. In this respect there is a striking contrast with the English mayor of contemporary years.

(5) Owing to frontier conditions and the leveling influences under which the mayoralty was set up in this country the office lacked much of the strength which custom and precedent gave to it in England.

(6) The failure of the office to develop importance prior to the adoption of the federal constitution may be traced to the absence of appointive power, the want of a complex municipal life, the active participation of the municipal councils in borough administration, and the failure of the mayors to exercise fully judicial powers which they already possessed. In this respect the early American mayor signally failed to follow the course marked out by the mayors of English boroughs.

### *Since Colonial Times*

It is extremely difficult to periodize the history and development of the mayoralty in the United States since the close of the colonial era. The development of the office has not been in any sense uniform and any effort to generalize must recognize numerous exceptions. This leads to the conclusion that it will be well to emphasize certain dates which have some general acceptance or special significance in the history of the mayoralty and describe the conditions then obtaining, with such reference to the intervening years as the history of the office may seem to justify. The years selected for this purpose are 1796, 1823, 1870, 1900, and the present time.

The year 1796 is significant both from the standpoint of the American municipal constitution and of the mayoralty as a part thereof. Both had been relatively unimportant in a population of which less than four per centum lived in incorporated cities

and boroughs. The years which had so much meaning in the early history of the country stood for little in municipal history. With the year 1796 it is different. It has real interest from the point of view of the mayoralty for it betokens the play of new forces and new ideas, and it introduces the years of development and growth in the position of the mayor.

Many writers have called attention to the influence of the federal principles of government in our municipal organization. It was but nine years after the framing of the federal constitution and but seven years after it went into effect that the evidences of this impact became discernible. Municipal government was in a formative and primitive stage of its development in this country. It therefore yielded quickly to the pressure of the ideas found in the new federal organization. The predominance of these ideas in the Baltimore charter of 1796 was overwhelming. In the case of the mayoralty its development may properly be said to date from this charter. Provision was made for the choice of a mayor thru an electoral college chosen by popular vote; the mayor was given a veto which was of substantial character, a three-fourths vote of the municipal council being necessary to override it; a limited power of appointment, responsibility in law enforcement, supervisory authority in municipal finance, and the duty of making recommendations to the council were bestowed upon him; he was to receive an annual salary. A more striking triumph of the ideas which created the national executive can hardly be conceived.

This victory proved to be too complete to be permanent. It was to be a century distant before the real position of the municipal executive was to approximate relatively that of the federal executive. The Baltimore charter was a prophecy — not the fulfilment. It was a thing born out of due season. Some one has observed that the institutions which change most slowly, which possess the most vitality, are the institutions of local governments. It is an observation which holds true in American municipal history. The council was too firmly rooted in the public esteem and in the municipal constitution, the conditions demanding change were too feeble to force a general and immediate acceptance of the theories of the federal constitution as applicable to organization in municipalities. Every step in the ulti-

mate victory of the federal analogy was won only by a long and painful process of development. And when the federal principles finally triumphed in municipal life generally, when it had created the federal plan with its strong executive, it was heralded to the world as a conspicuous failure. Stress and circumstance had been creating other "plans." Intelligent care and scientific investigation are modifying all plans.

The year 1796, however, marks an important point in municipal history. The Baltimore charter, tho premature, signifies the emergence of the mayoralty into independence and importance. And the development of the mayoralty from this date constitutes one of the main features of the evolution of American municipal life and organization. The Baltimore mayoralty of 1796, with some few, tho not unimportant, modifications, is the mayoralty now to be found in most American cities. It is one of the few contributions of our municipal democracy to the theory and practice of our municipal organization and differentiates the American municipal executive from others in foreign lands.

In the course of the struggle of the federal ideas for recognition and supremacy in the municipal field, the year 1823 is significant because of the contribution which was made in that year and the years immediately following it to the conception of the municipal executive. It is not possible to separate the development of institutions from those personalities in which they find expression. If the Baltimore charter of 1796 was a prophecy of the mayor of a century later, Josiah Quincy was the later nineteenth century mayoralty incarnate. He became the chief magistrate of the recently chartered city of Boston in 1823. Under the charter of 1822 the office of mayor had supplanted that of moderator. Yet the position was not an imposing and a commanding one. The importance of executive leadership was not expressly recognized. Popular election alone appears as an important element in strengthening the mayoralty, tho Boston was not the first to introduce the popularly chosen municipal executive. But popular election plus the personality and vigor of Mr. Quincy produced a demonstration of the mayoralty and its possibilities that has left its mark to the present day. Moreover Mr. Quincy consciously cultivated the intelligence, confidence, and appreciation of the municipal electorate in the work which he



was doing. He not only set the standards of the office for many years in advance, but he left in the mind of the municipal citizen a definite conception of a new type of municipal executive.

The contribution of Mr. Quincy was not the work of a man lustful for power in order that he might aggrandize himself, or further partisan interests. The strength which he brought to the office and the interpretation which he gave to its place and function in municipal organization were imparted with a full appreciation of what he was doing. In describing the events of his first inauguration as mayor Mr. Quincy says of himself "The Mayor, in his inaugural address . . . deduced the spirit of the city charter from its language and the exigencies which led to its adoption, and explained his views of the powers and duties of the office of Mayor, and the principles by which he should endeavor to execute and fulfil them." He then outlined the defects in the old town organization and especially those of division of executive power, lessened responsibility, want of relationship in the work of the former branches of the executive. The remedy was provided for "in the powers of the Mayor," which he conceived to be "requisite" for the efficient exercise and fulfilment of the duties imposed upon the municipal executive. The purpose which moved him during his mayoralty is clearly expressed in his own words thus: "To postpone, and if possible, to prevent the occurrence of such a state of indifference to the essential qualities of the executive [as he was described in the preceding paragraphs] . . . the Mayor elect deemed it his chief official duty to produce and fix in the minds of all the influential classes of citizens a strong conviction of the advantage of having an active and willingly responsible executive, by an actual experience of the benefits of such an administration of their affairs; and also of their right and duty of holding the mayor responsible, in character and office, for the state and the police and finances of the city." To bring the responsibility of the executive officer into distinct relief before the citizens, was accordingly a leading principle, by which he endeavored to regulate his conduct in that office. This purpose he avowed, and never ceased to enforce by precept and example, during his administration of nearly six years.

No student of municipal history who has perused the career of Mr. Quincy, either as recorded by himself or by others, or who

has studied his messages and addresses to his fellow officers and citizens in Boston can reasonably question but that he approximated the ideals of the mayoralty as he saw them. He did not escape scathing criticism of either his views or his acts. "The Mayor assumes too much himself. He places himself at the head of all committees. He prepares all reports. He permits nothing to be done but by his agency. He does not sit solemn and dignified in his chair, and leave general superintendence to others; but he is everywhere, and about everything, — in the street; at the docks; among the common sewers; — no place but what is vexed by his presence." In these words Mr. Quincy quotes the complaints of his adversaries. To a man with his convictions and firmness of purpose they must have been the assurance that he was in some measure achieving his purpose.

It is not easy to realize the full influence of such a mayoral career as that conceived and worked out by Mr. Quincy. The tracing of this influence in Boston is not so difficult, but elsewhere the problem is a much harder one. Nevertheless one may not doubt the fact that the effect of the demonstration which had been thus consciously staged in Boston was an important factor in the future development of the office. There was no little correspondence between officials in the principal cities of the day, for example, between Boston and New York, Philadelphia, and Charleston, South Carolina, respectively. The achievements of this administration in Boston were known elsewhere. It is not possible to say to what extent mayors elsewhere were inspired to larger efforts and more vigorous service by reason of Mr. Quincy's example. Even less is it possible to say to what extent the latter's methods had laid hold upon the ordinary municipal citizen, or those who had to do with the drawing up of municipal charters in the years following. There was a reaction from mayor government even in Boston following Mr. Quincy's retirement, yet no succeeding mayor failed to feel his influence. An influence of this sort is no less real because it is hard to measure. Such conceptions as his do not permeate the public consciousness nor command general acceptance all at once. But that there is a real connection between a Quincy and a mayoral type such as we are familiar with today cannot be seriously questioned. By seizing upon the opportunity to show the possibilities of an office that was passing thru a formative period Mr.

Quiney proved himself to be one of those creative spirits who from time to time leave their impress upon even the institutions with which they come in contact.

The acceptance of the elective mayoralty in Boston in 1822, tho not the first instance of the elective principle being applied to this office, is also significant because it foreshadows the triumph of the executive over the bonds which had heretofore been the guarantee of council predominance. The overthrow of the latter did not come all at once, but it has steadily declined in influence and power from that day to this. Popular election of the mayor spread rapidly and with popular election came independence. From being the servant of the council the mayor was suddenly confronted with the opportunity of becoming its master. The course of municipal development, the inability of the councils to adjust themselves to the rapidly shifting conditions of the following century, the like futility and ineffectiveness of legislative interference, coupled, as it was, with waste and spoils, the greater ease with which the mayor could be brot to feel the pressure of public opinion and with which responsibility could be fixed upon him, all these factors and others combined to give the executive its opportunity. Mr. Quiney seized upon this opportunity with more zeal and with larger comprehension than did most of his successors. But that the latter, too, did not fail is evidenced by the fact that between 1822 and the present time the mayoralty has received no serious setback in its movement toward the most commanding position in the mayor and council plan of government.

The importance of the triumph of popular election can hardly be overestimated. It is an indication of the serious and honest effort that was being made to apply the principle of the separation of powers to municipal government and organization. It was a development that has changed the character of American municipal institutions. The theory of the separation of powers is impracticable. It works out in the establishment of some extra-legal mastery, or as in the case of city government, the triumph of one of the divisions of power set up. It was inevitable in the municipal field, where the work of government is so largely administrative in its character, that, once the principle of separation of powers was recognized, the mastery should gravitate toward the administrative organ or head of municipal govern-

ment. Popular election gave to the mayor the strategic position. Mr. Quincy made the most of it. He always made it a point to inform the electors with regard to his policies and plans. He perceived very clearly that with the support of the electors behind him he could readily dominate the council. His success has perhaps never been excelled; but his methods, and others which he was not able to employ under the less favorable conditions then obtaining in law and custom, have been assiduously utilized by many a mayor in succeeding years. Had popular election of the mayor never come, the council might have been saved, but with popular election once established the supremacy of the council in the field of municipal government was ultimately doomed. The same forces are at work in varying degree in state and nation, tending to exalt the administrative arm of the government and to depress the legislative; and the steady increase of the presidency and the governorship at the expense of the congress and the state assemblies respectively, and in spite of a resistance fortified by the provisions of written constitutions, shows how logical and irresponsible was the growth of the mayoralty.

If the establishment of popular election for the mayoralty was not a direct blow at the power of the council, the bestowal of the veto upon the mayor must be accepted as the beginning of the positive movement against the position and integrity of the legislative branch of the municipal government. This development in the mayoralty appeared in the New York charter of the year 1830, and in the words of Mr. Greenlaw constitutes the "first marked encroachment on the powers of the council." Moreover this veto was an absolute one — the signature of the mayor was necessary to the enactment and validity of ordinances. The absolute veto gave way to the qualified veto in the course of its development, and this in turn to the selective veto when appropriation bills were concerned; but the net result was the development of a most important power of the municipal executive in legislation, a power which in New York state has been extended to include local and special legislation affecting municipalities.

The time when the mayoralty generally was vested with a legal control over administration is not easy to determine. The tendency in that direction antedates the year 1850, but it is between 1850 and 1860 that some of the more important and permanent steps are taken. Out of twelve representative cities five of them



made some progress toward vesting the mayor with varying measures of authority over appointments, and four of them vested in him either complete or partial supervisory powers over administration. Feeble powers of removal appear in three of them, while the vague responsibility of being "chief executive" is imposed in five. In the charters issued in the smaller cities between 1850 and 1870 the mayor's administrative control is quite noticeable. In Illinois, for example, the charters of Macomb, Jacksonville, and several other cities confer upon the mayor the power of appointing the school board, a power not given under the general municipal act of 1872 and bestowed today in only a few of the larger cities. Altho the following decade appears to have been a period of relatively little change, with reaction showing itself here and there, as in Pittsburgh (where the veto power was temporarily lost in 1867), yet there was no important setback in the development of the mayoralty. The year 1850 therefore marks the point when the mayoral office "finds itself," so to speak, and it is definitely recognized in law as the principal repository of administrative authority and responsibility. It must be said, however, that the definite coördination of the mayor's powers and responsibilities was not seriously attempted during this period.

Roughly speaking the significance of the year 1870 lies in the fact that counciliar supremacy and legislative interference had both been tried and found wanting by this time. Corruption and self-seeking were the usual product of the former and were coupled with gross inefficiency. Confusion and irresponsibility followed the train of legislative efforts to remedy the situation in municipal government. The preliminary tryouts of the mayoralty had been made. Frequently the results had been favorable. From this year, therefore, there is noticeable a distinct acceleration in the trend toward mayor government. The mayor became the "hostage" for the good government of the city, even before authority commensurate with this responsibility was committed to him. But this was not long the case. Within the next thirty years the mayor system, with comparatively few exceptions, became the rule in those parts of the country where municipal government was a problem of consequence. The steps which were taken to effect this predominance of the municipal executive were the extension of the mayor's power of appointment and removal,

a point upon which there was remarkable agreement among the charter makers of the period, the lengthening of the mayor's term of appointment to office, the express announcement in many charters of the mayor's liability for the good government of the city, and the expansion of the mayor's power in municipal legislation and finance thru the bestowal of positive rights and duties and the strengthening of his veto.

The development of the mayoral office to its position of responsible leadership is largely the fruit of the last half century. "The mayor system," "mayor government," and like expressions by which we characterize the predominance of the executive in the majority of American municipalities, represent comparatively recent efforts to describe the result produced by the evolution of organization in cities operating under the "federal" principles. This result was so nearly achieved in 1900 that it had called forth general recognition and no little treatment. Moreover, with few exceptions, it was a result that was accepted in large measure in all parts of the Union. It had no serious rival systems with which to contend. True the council was still powerful in many cities. In states like Illinois, the general municipal law did not admit the supremacy of the executive in municipal affairs, but in practice he was very much more powerful than the legislative acts alone would indicate. The place of the office in the municipal regime appeared secure and in many places complete. Its supremacy was now rooted deeply in the past, and there were advocates, not a few, who urged continued exaltation of the office as the most promising hope for good city government in the United States. The hopes of reformers were centered upon it and the enlargement of its influence and power. The judicial functions of the office alone had declined in importance, except in some parts of the south and in Indiana.

Everywhere, practically, the mayor's power to mold the rest of the administrative service, so far as it was under the control of the local government, was recognized, tho to a much greater degree in some cities than in others. Sometimes his powers of appointment and removal were complete, but the practice was more general of requiring the consent of the council, or of one house thereof, to appointments, and often removals by the mayor might be overruled by the council. The tendency was strongly in the direction of making the authority of the mayor independ-

ent of any interference on the part of the council in administrative appointments and removals. In cities where this authority was already complete a statement of reasons or a report to the council of the grounds for the exercise of the power to remove officials was sometimes provided as the sole check upon arbitrary action. Mr. Greenlaw concluded in 1899 that in no other point were the city charters so generally in agreement as in the dependence of administrative officers upon the mayor.

The relation of the mayor to municipal legislation was expressed in an almost universal recognition of the veto power in its qualified form and in a wide acceptance of the selective veto. The veto, indeed, was in the process of a vigorous and healthy development and was being strengthened in matters of finance, including appropriations and indebtedness, and franchise grants. The mayor sat in the council as presiding officer, and he was usually clothed with authority to cast the deciding vote in case of a tie and at times in other matters. In Chicago the mayor had wrested from the council the acknowledged right to appoint the committees of the latter, a victory for the executive that was won by Carter H. Harrison, Sr., as a result of a hard struggle. In New York City the influence of the mayor did not cease when his term of office was ended, but he was given a seat and voice, tho no vote, in the council meetings as long as he was a resident of the city.

Only a few years more were required before the application of the federal principles brot forth the plan of municipal organization, in which the mayor became the prototype within the municipality of the president in our national government with the administrative service grouped into great departments headed by his appointees. In municipal charters and general laws the mayor was made responsible for the government of the city, for the honesty, efficiency, and economy of administration, the character of its laws and the good order, peace, and safety of the community. The attempt to find pure city government and successful administration by the concentration of great powers and even greater responsibility in the person of one man, in the opinion of Mr. Greenlaw, was "almost pathetic." "There is," says Mr. Brand Whitlock, the ex-mayor of Toledo, Ohio, "a strange, almost inexplicable belief in the almost supernatural



powers of a Mayor." Says Mr. Whitlock, "I have been waited on by committees — of aged men — demanding that I stop at once those lovers who sought the public parks on moonlit nights in June, I have been roused from bed at two o'clock in the morning with a demand that a team of horses in a barn four miles on the other side of town be fed; innumerable ladies have appealed to me to compel their husbands to show them more affectionate attention, others have asked me to prohibit their neighbors from talking about them. One Jewish resident was so devout that he emigrated to Jerusalem, and his family insisted that I recall him; a Christian missionary asked me to detail policemen to assist him in converting the Jews to his creed; and pathetic mothers were ever imploring me to order the release of their sons and husbands from prisons and penitentiaries, over which I had no possible jurisdiction." To one sorrowful suppliant the mayor was "the father of all." Moreover, "this exaggerated notion of the mayoral power was not confined to those citizens of the foreign quarters; it was shared by many of the native Americans, who held the mayor responsible for all the vices of the community."

Mr. Whitlock wrote, of course, a decade or more later than Mr. Greenlaw and others who were describing the mayor system of the close of the nineteenth century, yet his words fairly describe the popular opinion of the degree of responsibility which had been heaped upon the municipal executive during the closing years of that period, and indicate how impossible it was for the mayor to approximate in performance the conceptions more or less generally held regarding his position, powers, and functions. Nor did the more intelligent escape this conception of the mayoralty. The "Conferences for Good City Government" gave large space on their programs and in their published "Proceedings" to rehearsals of the campaigns for the mayoralty in various cities; the progress forward or backward was to no small degree measured by the success of reform or independent mayors: the mayor was to make up for the sins of the past, he was the prophet whose coming was the promise of better things, and as executive he appeared the sole hope and refuge of a people who despaired of attaining good city government. The mayor was to be the savior of a municipal citizenship that had not yet perceived that its only salvation could come thru its own exertions, that in



truth was almost convinced of its own incapacity for self-help. The measure of responsibility heaped upon the mayor had far surpassed the means at his command for meeting the multitudinous demands and obligations that pressed upon him. Indeed, the means for meeting the responsibilities placed upon him were not fully bestowed upon the mayor, even when the measure of his authority appeared to be the greatest.

By the close of the century the federal principles of government as conceived and worked out in the American national government had wrought an almost complete change in the organization of American cities. Some things yet remained to be done if a true copy of the federal system was to be realized in municipal government, but, barring a revolutionary upheaval in thinking and in tendencies, the complete application and acceptance of these principles did not appear to be far distant. Moreover, most men were hoping that this time might come speedily. Only here and there arose rare and scattered voices of protest and pleas for the revival and restoration of council government. The tide toward mayor government and the exaltation of the executive seemed to be sweeping ahead irresistibly. The mayoralty seemed destined to become the center of that centralization in our municipal democracies toward which De Toqueville asserted all democratic governments were tending.

How altered is the situation today! At the very moment of its triumph the mayor plan was successfully challenged. Now nearly a half thousand vigorous and aggressive municipalities enthusiastically proclaim that they have found something better, and in these the mayor is either largely shorn of his power, or dispensed with altogether. Every year adds some scores to the number of cities which relegate to the past the federal analogy as developed in the field of municipal government. To take its place the commission plan and the city manager plan have appeared. They have not won recognition without a struggle, but they have won it. The old order is changing rapidly.

Nevertheless the mayor plan will not disappear. In the course of the contest for public favor it is being stimulated and purified. Many of the more important achievements of the past fifteen years stand to the credit of cities governed under a mayoral regime. In these accomplishments the leadership of the mayors

has been conspicuous. Education in local problems has very often been the product of a mayor's leadership and vision. The organization of mayors' associations in many states testifies to a desire and determination to furnish constituencies with intelligent political leadership. The most active members of state and national organizations for municipal betterment are frequently mayors of cities. The mayoralty has undoubtedly held its own in the great cities of the country, and the total number of cities under mayor government is probably not very many less than it was at the beginning of the century. Moreover, it must not be forgotten that there has been a continued development of the power and position of the mayor, and that its predominance in the system based upon the federal analogy is more firmly established than ever before. The desire to supplement popular control and clearly defined responsibility with efficiency has caused the further strengthening of the executive, and the success of rival schemes of municipal organization has hastened and accentuated this development.

Despite this apparent position and continued growth of the mayoralty, it must be observed that it is no longer the most striking feature of municipal life and organization. Tho by no means inconspicuous, recent surveys of municipal tendencies have often omitted to mention it, an oversight which would have been inconceivable little more than a decade ago. It is more difficult to watch a three-ringed performance and the tendency is to watch most intently the latest development. It is true, too, that having set up an organ of government that was both powerful and responsible the attention of reformers was turned toward other problems of municipal life and government, especially that of securing efficiency in the public service. To the solution of this problem both the commission and the city manager plans have rendered signal help. These plans have been the offspring of the movement for efficiency. The evolution of mayor government gradually prepared the electorate for that concentration of authority which efficient administration demands. The splendid successes of the newer forms of government have not sprung full-grown from the fertile womb of disaster; they are rather the product of earlier struggles, the end of which was the reconciliation of democracy and efficiency in American city government. It

now appears that mayor government, commission government, and city manager government are to participate in achieving that end. For today each of these forms is potentially and actively full of promise that the end will be realized. The municipal citizen who is still in the prime of life has a reasonable expectancy of living to see good government become the normal thing in American cities, whether their executives are mayors, mayor-commissioners, or city managers.

## CHAPTER III

### THE MAYORAL CONSTITUTION TODAY

A survey of the mayoral constitution as one finds it today does not reveal striking dissimilarities with the constitution of the office fifteen or twenty years ago, at least not in the municipalities retaining the mayor and council plan. Marked changes have occurred in the constitution of the office in commission and city manager governed cities, but these will be considered in the chapters devoted to the executive under these two types.<sup>1</sup>

#### *Qualifications*

The qualifications for the mayoralty are properly considered from two standpoints, the legal ones imposed by statute upon the holder of the office, and the practical requirements imposed by the exigencies of practical politics. The legal group of qualifications varies widely in its details, but there is great similarity, amounting almost to uniformity, in the principles applied. In the political group the qualifications are almost everywhere the same, and, on the whole, have operated to produce a mayoral type somewhat different from the other leading executive types of American officialdom. The legal group of qualifications has exercised an almost negligible influence in determining the kind of men who occupy the office. The influence of political forces and requirements has been potent and constant and therefore most effective.

In the legal group of qualifications three are almost universally required, viz., local residence, United States citizenship, and suffrage right. In many of the larger urban communities age and property qualifications are added. The requirement of local residence has no important exceptions in this country. In

<sup>1</sup> An excellent short review of the constitution of the office is presented in the second chapter of Mr. Bayles' monograph published in 1895. The chapter title is "Present Constitution of the Office."



states where cities operate under general statutes, as in Illinois and Indiana, the general municipal act usually imposes the residence requirement.<sup>2</sup> In other cases the requirement is a feature of the special charter under which the municipal corporation is operating. Thus the charters of Boston, Philadelphia, Rochester, Baltimore, Detroit, St. Louis, Denver, Kansas City, San Francisco, and many other cities specifically require local residence. The New York City charter of 1901 did not specify residence in the city as a requirement, but the proposed charter of 1909 inserted such a qualification for the office of mayor. The specification of the requirement has, of course, been unnecessary in those cases in which it has been omitted, political availability heretofore imposing the residence requirement where the law has refrained.

The length of the residence required varies considerably. In the city of Rochester but five months suffice to satisfy the legal requirement. In many cities it is but one year, especially in the smaller cities and those operating under general state law in Texas. In Mississippi it is two years. In Louisville, Ky., the period of residence must have been three years. In Kansas City, Baltimore, Philadelphia, and St. Louis the residence demanded of the mayor prior to his election is five years.

The purpose of the residence qualification is not expressly indicated in the charters and statutes which give it force. The theory underlying it has a twofold basis, viz., local residents are most familiar with local conditions and every locality has residents capable of filling the office satisfactorily. The flavor of local patriotism has not confined its influence to our representative bodies alone but has heretofore been equally potent in the effect it has had upon executives in municipalities. No doubt it has been entirely unnecessary in the past to incorporate a residence requirement in the charter or general law. Proposals that residence within the state suffice, or that there be no residence requirement whatever have scarcely received a respectful hearing at the hands of charter conventions and state legislators, and indeed, of municipal citizens and electors themselves. A non-resident, until within the present renaissance, would rarely if

<sup>2</sup> Note for example, the provisions of the Municipal Laws of Illinois, Art. 2, Sec. 21: "The chief executive officer of a city shall be a mayor, who shall . . . reside within the city limits . . ."

ever have had any opportunity of even coming before the electors as a candidate. Partisan politics as developed in American cities have amply guaranteed local residence. Moreover, there appears to be no breakdown in this requirement with respect to the mayoralty. While experts may be sought for among non-residents this enlightened tendency has not been manifest in the search for mayors. The force of custom, the weight of inertia, and the elective character of the mayoralty are large factors in the maintenance of the residence qualification.

If the residence qualification has any justification it seems reasonable that the practice in some cities of requiring a residence of from three to five years is to be commended. Whatever force the residence qualification may have appears to be lost under the five month requirement of Rochester. In smaller cities three years would suffice, while in the metropolitan centers five years does not appear to be unreasonable if familiarity with local conditions is to be presumed on the part of the holder of the office. The thirty to sixty day residence qualification serves no purpose except to make sure that the mayor is a qualified elector at the time of the election.

The requirement of citizenship is imposed upon mayors in most municipalities, tho not always in specific terms. In St. Louis, Baltimore, Kansas City, and many other cities there is an express provision establishing citizenship as a qualification for the office of mayor. The general municipal act of the state of Illinois fixes a like requirement for mayors in all cities of the state. In Philadelphia and Pittsburgh state citizenship is required. In Cleveland, New York, Portland, and a few other cities citizenship is not made a qualification either directly or indirectly in the municipal charter.<sup>3</sup> Indirectly citizenship is required by the provision that the mayor shall be a qualified elector of the city or state, a method which is effective inasmuch as all but ten of the states provide that electors shall be bona fide citizens of the United States.<sup>4</sup> In some of these ten states the charter provi-

<sup>3</sup> Not even the qualification of being an elector is specified, probably owing in part to the fact that practically speaking such specification is unnecessary.

<sup>4</sup> Beard, C. A., *American Government and Politics* (new and revised edition of 1914), pp. 454, 455. These states are Alabama, Arkansas, Indiana, Kansas, Michigan, Missouri, Nebraska, Oregon, South Dakota, and Texas.

sions of the municipal constitution supplement the state electoral code by specifying citizenship as a qualification for the office.<sup>5</sup>

In some of the cities referred to in the foregoing discussion the qualifications for both citizenship and electorship are specified. If there is practical value in specifying either, the twofold requirement is not wholly superfluous, inasmuch as the bases of the two qualifications are by no means the same and citizenship is not always a prerequisite to the suffrage. On the other hand there are in all our cities vast numbers of citizens who are not qualified electors, and the requirement of citizenship alone might in some cases admit to the office those who were not privileged to vote. The first program of the National Municipal League suggested only that a candidate be a qualified elector.<sup>6</sup>

In general it may be said that the tendency in the states has been to make citizenship a condition upon which suffrage rests. It is improbable that this tendency will be relaxed; certainly we will not soon witness the extension of the suffrage to larger numbers of those who are not citizens. In the case of male citizens twenty-one years of age and upward the suffrage may usually be presumed, but this has not been true of female citizens, especially in those states in which the process of urbanization has proceeded furthest. The requirement that a mayor be a qualified elector presumes therefore in most cases that he is a citizen of the state or of the United States. Many important cities specify the requirement of suffrage right and this qualification is likely to maintain its place in the charters of the future. The city of Boston even limits the eligibility list to the "male qualified registered voter." The new city charter of St. Louis on the contrary omits the requirement that the mayor be an elector. No marked trend toward or away from this qualification is discernable in the municipal history of the past two decades.

In addition to the requirements noted above as qualifications for the mayoral office there are some others which are less gen-

Five of the great metropolitan districts lie wholly or in part within these states, viz., St. Louis and Kansas City in Missouri, Detroit in Michigan, Indianapolis in Indiana, and Portland in Oregon.

<sup>5</sup> This is true in all but one of the metropolitan centers lying in the states named in the preceding note. *Cf.* St. Louis, Charter, Art. 7, Sec. 2; Kansas City, Charter, Art. 4, Sec. 2; Detroit, Charter, Sec. 89.

<sup>6</sup> National Municipal League "Program," Art. 3, Sec. 1.

erally recognized, but which are still of considerable importance. The age qualification of twenty-one years, is, of course, quite commonly recognized either directly or indirectly and may as a rule be assumed. It is rarely if ever, expressly inserted in the municipal charter, or in the general laws of the state. The provision specifying that the candidate must be a qualified voter indirectly fixes a minimum age limit. The charters of the larger cities, however, quite commonly fix a higher age, some of them in express terms, others indirectly. The charters of Philadelphia, Baltimore, Kansas City, Pittsburgh, Charleston, and the general law of the state of Montana prescribe that the mayor must be twenty-five years of age. The new charter of the city of St. Louis follows the former St. Louis and New Orleans charters in fixing the minimum age at thirty years. The charter of San Francisco indirectly specifies the age qualification as twenty-six years by requiring that the mayor has been an elector of the city and county for five years.

The property owning and tax paying qualifications, while not generally imposed, still maintain their places in some of the important cities of the land. In Baltimore the mayor must for two years have paid taxes on property in the city to the value of two thousand dollars. In Kansas City the mayor must have paid city and county taxes for two years just preceding his election to the office. The charter of Seattle provides that the mayor must have been a tax payer of the city for at least four years preceding his election to the office. The general municipal act of Montana lays down the qualification for all mayors within the state that they shall be tax paying freeholders within the limits of the city in which they hold office. The recently adopted St. Louis charter provides that the mayor shall have been an "assessed tax payer of the city for two years." Writing twenty years ago Mr. Bayles thought the imposition of property holding qualification was "very rare," and concludes that the value of such a requirement is not apparent, inasmuch as "in practice it need never disqualify a candidate." There seems to be no tendency, however, to omit this qualification in cities where it has heretofore existed. Failure to require property ownership and tax paying has not demonstrably lowered the character of those holding the municipal executive office in cities which do not require them. On the other hand these qualifications have not



given evidence of their power to elevate the standards of the office in those cities which retain them.

Quite rarely the provision is to be found in the charters that the mayor is not to hold any other official position during his term. The new Cleveland charter provides that the mayor "shall not hold any other public office or employment, except that of notary public or member of the state militia." The provisions of the general municipal act of the state of Illinois and of the Rochester charter prevent the mayor from holding more than one municipal office during the term for which he may be elected. The old St. Louis charter prohibited the mayor from holding any state or federal office while mayor. By judicial decision a number of offices have been held in certain states to be incompatible with the office of mayor.<sup>7</sup> In general, however, the question of the mayor holding two or more offices is one that takes care of itself. Tradition in the American municipal democracy is in accord with the general sentiment of the nation regarding any effort on the part of one individual to secure an undue share either of honor or more particularly of emoluments. The number of those who are willing and anxious to serve the public is too great to permit their votes or influence to be ignored by prospective candidates.

In any extensive survey of the mayoral office one finds numerous special qualifications. In New York City the mayor may not be one who is a pensioner of the city. In Pennsylvania cities holders of the office may not succeed themselves. The charter of the city of Detroit prescribes that the mayor be able to read and write the English language "intelligibly," and authorizes the council to declare void the election of any person not so qualified. A number of cities prohibit the mayor from having any interest whatever either as principal or surety in city contracts. Defaulters to municipal corporations, and those who have been convicted of malfeasance in office, bribery, or other corrupt practice or crime are declared to be ineligible in Illinois and in St. Louis respectively. The Baltimore charter declares that the mayor shall be a person "of known integrity, experience and sound judgment."

Despite the imposing array of legal qualifications which are demanded of those who would fill the office of mayor, it may be

<sup>7</sup> Bayles' *The Office of Mayor in the United States*, p. 21.

confidently asserted that few of them serve to bar from office those who are eligible from a political or partisan standpoint. Occasionally, it is true, the existence of these legal qualifications may serve a purpose. The spectacle of San Francisco casting more than thirty thousand votes in 1915 for a mayoral candidate who had served a term in prison for being associated with a former era of corruption in the government of the city would have been prevented by the presence of legal qualifications which would have nullified such candidacy had it been successful. American municipal democracy will not, however, secure the more desirable type of mayors through the imposition of mere legal qualifications. The real standards and qualifications which those who aspire to be mayors must meet are those which exist in the political consciousness of the municipal electorates. From the standpoint of practical politics the extra-legal qualifications, constituting the "availability" and "acceptability" of mayoral candidates, are of vastly greater importance.

Mayoral candidates are usually party men and even when this is not the case as sometimes happens in the reform and fusion movements which characterize American municipal political strife, they must be men either of known or potential strength with the electors. The qualities that give men such strength vary considerably with the time and the city. Political activity prior to the period of candidacy and office holding has been an unquestioned asset in the great majority of cases. Experience in public office, especially if the record of service be generally acceptable, is an advantage not lightly despised. A "safe" candidate is always acceptable to large numbers of the electorate. Inasmuch as a successful candidate for mayor tends to become a power in the party organization the leaders in established party circles must be satisfied with a prospective candidate. To this end recognition won in party endeavor and leadership established by successful party work is desirable. An attractive personality, a known sympathy with many classes in the community, a reputation for being public spirited, power as a "mixer" and as a writer or speaker, an absence of puritanical tendencies in the enforcement of law, and a capacity for overlooking or for dealing mildly with the petty delinquencies of humanity, secret or open acknowledgment of the powerful private interests that deal directly with the municipal government, a declared regard

for the safety and liberties of the individual and an avowed determination to curb vice and crime, ability to manage, bluff, or bulldoze municipal councils, a habit of thinking and willing for oneself and a sort of courage that dares to counter private and party bosses or even the public opinion — all these qualities in varied measure go to make up the mayoral type of the American municipality. Social distinction, wealth, expert training for the work of the municipal executive, and advanced educational attainments have not been conspicuous as characteristics demanded of the American mayor. Yet the extra-legal qualifications which he must satisfy have been quite exacting, the extent to which one group of characteristics or another must predominate depending upon the circumstances surrounding the campaign, the qualities of the opposition candidate, and the temper of the electorate.

It should be further observed that such legal qualifications as those of residence, reasonable maturity, citizenship, and suffrage right are so powerfully enforced by the purely political exigencies of American public life and by that intensity of local pride and self-sufficiency as to render their inclusion in charter provisions and general municipal acts almost superfluous. On the contrary extra-legal conditions have been fostered consciously by the professional politician class partly for its own benefit, and partly to check opposing partisans, and partly from a sincere belief that these conditions are eminently desirable. In general they have harmonized with the more common legal qualifications imposed upon mayors and have rendered such qualifications largely unnecessary.

### *Nomination and Election*

With the exception of the city manager the chief magistrates of American cities are elected by popular vote. This method of choice renders necessary the development of adequate systems of nomination. In the course of American municipal history there have been five distinct methods of placing in nomination candidates for the mayoral office. These methods are as follows:

1. Self-announcement by the candidate or an informal caucus of his friends.
2. Nomination by a municipal party caucus or primary.
3. Nomination by a delegate convention composed of representatives of a city party or at least of its organized units.

4. Nomination by petition or nominations papers signed by a proportion of the qualified voters.

5. Nomination by direct primary.

There have been other methods used especially when the power of choosing the mayor was vested in the hands of the governor as in colonial times or in the council as in the early national period and in Tennessee down until the close of the nineteenth century.<sup>8</sup> But, as Mr. Edward Stanwood remarks in his *History of the Presidency*, from the meager materials at hand, it is not easy to reconstruct the political machinery in use during the first thirty years under the Constitution. Nor must it be supposed that, where many communities were developing political institutions without much help from one another, because not in close intercourse, any general statement regarding their practice is true at all.<sup>9</sup> Of the methods named, however, the first three have largely passed out of use, the second alone being still employed in some of the smaller cities in states where the general laws have not standardized the practice regarding nominations and elections thruout the state. In the case of the third method or nomination by delegate convention, it appears that until 1913, state law still permitted its use in cities of the third class in the state of Utah, but the same law permitted also the nomination of candidates by the use of nomination papers.<sup>10</sup>

It is difficult to determine whether relative predominance belongs to nomination by petition or to nomination by direct primary, the two methods which are most common today. In general it may be observed that they have an almost equal hold upon the municipalities, tho the direct primary method appears to find favor in the larger cities. The practices with respect to nominations vary so widely in details that it is only with respect to the more general principles followed that it is possible to make note in this discussion.

Nomination by petition involves the filing of a request that the name of the candidate for the mayoral office shall be printed

<sup>8</sup> Cf. Bayles' *The Office of Mayor in the United States*, p. 21. This is not the case today in important cities such as Memphis and Nashville, the latter now operating under the commission form of government.

<sup>9</sup> Stanwood, Edward, *A History of the Presidency*, p. 170.

<sup>10</sup> The earlier systems of nomination overlap so in their use that a general statement as to the probable predominance at any given time of any one of them must be accepted cautiously.



upon the official ballot. This petition must be signed by a certain number or proportion of the qualified electors of the municipality and must be accompanied by the addresses of the signers and the attestation, usually a sworn statement, of the one who secured the signatures certifying that they are valid and are believed to be in conformity with the election laws. This petition is filed with the election authorities, its validity investigated by them, and if satisfactory, certified by them and the nomination placed upon the ballot. To these general features there are added many others, the details exhibiting some variation in almost every important locality. Thus there are opportunities provided for candidates withdrawing their names, for signers withdrawing their signatures, and for the filling of vacancies in nominations. In some places there are requirements that candidates must accept in writing the nominations made.<sup>11</sup> In Boston the signers must be registered as well as qualified voters.

Certain important questions appear in connection with the method of nomination by petition. The first of these has to do with the number of nominating signatures that is to be required. In Boston the number is three thousand registered voters. There has been at least one serious effort to have the figure reduced to one thousand. Apparently this effort was sponsored by the Democratic machine tho its purpose in doing so is not clear. Party organizations find their opportunity in the surmounting of obstacles which serve to deter less united and perhaps less actively interested citizens. In fact political organizations have filled a real place in American political life by caring for just such tasks and thereby relieving the voter of the burden, and too often, in his shot, of his responsibility. The Boston charter at first required five thousand valid signatures in order that a few very good men might have a chance to get their names on the ballot. But in practice the requirement of this number of signatures was expensive, some of the petition gatherers charging as high as twenty cents per name; while to provide against signatures being rejected there must always be secured a large surplus to insure acceptance of the petition.<sup>12</sup> The success of the large

<sup>11</sup> Cf. Cleveland, Charter, Sec. 7. Failure to file the acceptance as required causes the name of the candidate to be omitted from the ballot.

<sup>12</sup> Cf. a note in the *National Municipal Review* for April, 1914, p. 376, by H. S. Gilbertson. Mr. Gilbertson cites the *Boston Globe* as authority

petition in securing for Boston a higher type of municipal executive has not been conspicuously noticeable. It is true, however, that the issues in the Boston mayoralty elections have been rendered more clear cut.<sup>13</sup>

The adoption of the English system of nomination upon the petition of a comparatively small number of names, or some other equally simple process has been suggested as a possible way out of the rather intricate methods now in use. If practical in American political life such a step would be highly desirable but one may well question whether a system which is characterized by ease of nomination, inexpensiveness of operation, simplicity of procedure would not come to grief in American municipalities because of the absence of the stabilizing forces which characterize English and European municipal electorates. The presence of a highly educated governing class, the long established social and political traditions of the communities, the willingness of men of means and standing to spend and be spent in the public service—these factors are not conspicuous in American municipal democracies. Rather spoils, rotation in office, large salaries, vast legal power, the conception that almost every citizen is capable of filling responsible positions in the public service, and the immensely valuable franchises and concessions of municipalities have hindered the development of the restraints which more simple methods require. The transition to some less complex method of making nominations is one that is probably now under way. With the collapse of the convention system the work of experimentation has been undertaken on a large scale and if the present activity continues some method approximating

for the statement regarding the expensive character of nomination procedure. The Boston *Advertiser* is also referred to as pointing out that the situation thus created is unfair to the poor man who wants to fight the machine but has no wealthy backers. The charge that the system encourages perjury and fraud is also made though no evidence to that effect is produced. One may not accept these statements unreservedly; the mayoralty in Boston has been continually in the hands of those not aligned with the well meaning and well-to-do reform element of the Back Bay.

<sup>13</sup> See the discussion of the workings of the Boston plan and the need of simplification by Dr. W. B. Munro in *The Government of American Cities*, pp. 136-139. Dr. Munro concludes that the Boston system of requiring 3000 names has served "the cause of independence in municipal politics better than any of the nominating systems which preceded it . . ."

a solution of the problem of placing candidates in nomination may reasonably be expected to be worked out. The city of St. Paul has developed a method of "presentation for nomination" at the direct primary which requires but fifty genuine qualified signatures.<sup>14</sup> These must be presented in the form of individual certificates attested and acknowledged before a notary public. Altho this rather simple method precedes a primary election, experience may demonstrate that it is applicable on a broader scale. The practice which is current in Los Angeles of requiring the payment of a fee at the time the nomination petition is filed may prove to be of permanent value in connection with the method of nomination by petition. In the charter which was proposed for Seattle in 1914, the filing fee was fixed at one per centum of the annual salary.

Nomination by petition has tended to gain in favor if one may judge from some of the more important recent charters. The charter revisions in Boston, 1909, Detroit, 1914, Columbus, 1914, Cleveland, 1913, Cincinnati, 1914, Minneapolis, 1913, and Seattle, 1914, besides those in many smaller cities, all provided for nominations by petition. Moreover there was noticeable advance toward simplifying the procedure. Thus in the Minneapolis proposals nominations could be made on the petition of one hundred qualified voters, in Detroit of five hundred voters in case of the mayoralty, in Columbus of two per centum of the registered voters. Not all of these charters were accepted but in no case does rejection seem to have turned on the provisions for nominating candidates.

One of the most widely used methods of making nominations today is the direct primary or election to nomination under official supervision and upon an official ballot. The strength of political organizations has determined that it shall be the closed or party primary.<sup>15</sup> For this reason, in part, it has failed to achieve all that was expected of it and that was prophesied for

<sup>14</sup> St. Paul, Charter, Chap. II, Sec. 12. Further details of the system are contained in the Sections Nos. 11 to 19 inclusive.

<sup>15</sup> A summary description of the direct primary in its various phases and forms is found in Beard, C. A., *American Government and Politics*, pp. 691-699. A discussion of the subject will be found in Munro, W. B., *The Government of American Cities*, pp. 125-136. A more complete account of the method and its development will be found in Merriam, C. E., *Primary Elections*. There has been development, however, since this work was published.

it in the direction of encouraging independence in nominations. It was designed to supplant the convention system whose abuses so frequently scandalized municipal as well as state politics. Yet it has to no small degree come under the control of the very forces from which it was hoped it would free the voter. It has proven costly and has placed heavy burdens upon the electorate. In the opinion of many it has prolonged the period of domination of state politics in municipal affairs. There has been a determined movement, however, toward the non-partisan primary in municipal nominations, especially in commission governed cities, the result of which is to render somewhat more difficult the task of the professional politician to retain his leadership and control, but the advantages of organization and party backing are too great to be denied even in the non-partisan primary. As for the open primary there is little to suggest that it has a future in the United States.<sup>16</sup>

The dominating position of the executive in American cities today finds its fundamental basis in popular election. The price of leadership and supremacy in municipal democracy as in our state and national governments is the maintenance of close and immediate contact with the electorate. The mayor, to a larger degree than any other officer in city government, is the spokesman for the municipality, the mouthpiece of the voters. In New York, Chicago, Boston, Los Angeles, and many other cities, only those who register may take part in the elections. In most cities, however, the elections may be participated in by the qualified voters. Thus out of thirty representative cities twenty of them provide in their charters for election at the hands of the "qualified voters." The San Francisco charter and the Wisconsin general municipal act specify election "by the people." The provisions in Keene, Maine, call for election by the "legal voters." These various provisions have, in practice, about the same significance in that they refer to those who, under the laws of the state, are qualified to vote. In an increasing number of states, of course, this includes women.

Mayoral elections, in common with the usual American practice, are decided by the plurality of votes. Many charters spec-

<sup>16</sup> Nebraska tried the open primary and reverted to the closed primary. Wisconsin still retains the open primary together with the non-partisan primary in an optional form.



ify that a plurality shall determine elections.<sup>17</sup> Others assume plurality elections in accordance with the general practice in the state under state law. In general, however, plurality elections are recognized by students of municipal government and life as undesirable. In Salem, Mass., in 1909, a mayor was elected by twenty-four per centum of the votes, so divided was the opposition. These divisions are not infrequently the product of careful political scheming and are planned to defeat the will of the majority with regard to a particular candidate. One of the recognized merits of the non-partisan primary is that it insures majority elections. The same argument is advanced in behalf of the majority-preferential ballot. The majority and plurality principles are both utilized in the charter of Toledo, Ohio. The preferential ballot is employed in municipal elections and a majority of first choice votes elects, but if no candidate has a majority of first choice votes, then a plurality of first and second choice determines the outcome.

Non-partisan elections for municipal officers including the mayor imply the absence of partisan designations from the ballots voted. The city of Boston is conspicuous among the mayor governed cities in this respect, tho it is not uncommon among commission governed cities.<sup>18</sup> There are many municipalities, however, especially among the smaller cities, that do not permit the state and national party organizations to dominate local political life. In their place, however, there appear local party organizations, often very similar to the state and national branches in their purposes and aims. Aspiring leaders do not hesitate to use their power in the local organizations to further their ambitions in larger fields of political endeavor. In New York, Philadelphia, and Chicago, partisan elections obtain, tho in both New York and Philadelphia fusion and other independent tickets have always commanded strong support and have frequently been victorious at the polls. The problem of divorcing local and state political activity must be successfully solved if the interests of the city are to be happily served, but the solution becomes

<sup>17</sup> Cf. the charters of Hartford, Conn., Chap. II, Sec. 13; New Britain, Conn., Sec. 10; St. Paul, Minn., Sec. 25, which reads, "In all municipal elections a plurality of votes shall constitute an election." Also charter of Grand Forks, N. D., Sec. 114.

<sup>18</sup> See Amended Charter, 1909, Secs. 45, 46. See also Cleveland, Charter, Sec. 8.

increasingly difficult to achieve as American cities grow in population and consequently in political importance. State and national parties must retain a considerable vitality in the shot and attachment of the municipal voter if they are to succeed in the larger political field. Even in Boston, with its non-partisan elections, the Democratic organization had not failed to keep its hand on the city hall and the mayoralty.

Occasionally an election for mayor may result in a tie vote. Two methods are provided for deciding the election in such a case. The more common method appears to be that of casting the lot.<sup>19</sup> In other cases the city council elects the mayor, a "more honest way."<sup>20</sup> In Cleveland preferential voting obtains, and a tie is decided in favor of the candidate having the largest number of first choice votes.<sup>21</sup> This review of the methods of choosing mayors indicates some dissatisfaction with plurality elections tho these still prevail in most municipalities. The introduction of assured majority elections thru the preferential ballot or the system of non-partisan nominations reveals a determination to have the mayoral office represent as large a proportion of the people as possible. It is somewhat early to estimate finally the effect of substitution of nomination by petition and by the direct primary for the convention system upon the character and type of municipal executive produced; on the one hand there have not been the momentous transformations which were prophesied, and on the other hand there seems to be no good reason for returning to the convention as an organ for making nominations. The enlargement of the municipal electorate by the inclusion of women appears to be eminently justifiable from the standpoint of the mayoralty, tho the immediate influence is difficult to analyze and estimate.<sup>22</sup> There is apparent a widespread desire to

<sup>19</sup> Thus the charter of St. Paul, Sec. 25, provides that "the election shall be determined by the casting of lots in the presence of the council . . ." So also the city election law in Illinois, Art. 5, Sec. 11.

<sup>20</sup> As in Pittsburgh and Philadelphia. In the former the vote must be *viva voce*.

<sup>21</sup> Charter, Sec. 8. See also Toledo, Charter, Sec. 23. The lot is also utilized in the case of Toledo and Cleveland, in case the tie persists thru the first, second, and third choices in the number of votes cast for the respective candidates.

<sup>22</sup> See an interesting article in the *National Municipal Review* for July, 1915, entitled, "Are Women a Force for Good Government?" by Edith Abbott.

simplify the processes of choosing the mayor and this promises well in a day when the electors are in a mood to consider experiments. There appears to be no desire to make the office less dependent upon the popular support which has contributed so largely to making it what it is. Rather, the tendencies toward simplification aim to increase this dependence and responsibility to the electorate and to improve the position of the mayor as regards his relation to the other organs of government. The three principal objects to be kept in view in future development are ease of nominations, reasonable expenditures in behalf of candidacies, and majority elections.

### *Removal from Office*

Mayors may be removed from office, (1) by action of the municipal council, (2) by judicial proceedings before a court of competent jurisdiction, (3) by a state officer, the governor, or (4) by recall elections. In his survey of the mayoral constitution in 1895 Mr. Bayles noted briefly that the first three of these processes were then provided for either in municipal charters or under the general laws of the state.<sup>23</sup> The fourth process, that of the recall, has developed since that time, and bids fair to become the most generally employed of the four.

The power of the council to remove the mayor has been held to be a common law power vested in municipal corporations. It arises out of the recognized right of corporate bodies, public and private, to select their own officials and to hold them responsible for the conduct of the affairs of the corporation. In the states of New York, Tennessee, West Virginia, and New Jersey, this power has been recognized as one which may properly be exercised by the representative body or council of the corporation. Dr. John F. Dillon in his *Commentaries on the Law of Municipal Corporations* ventures the opinion, in the absence of judicial settlement on the question, that the municipal council in the United States possesses the authority to remove, for cause, the corporate officers of the municipality whether elected or not.<sup>24</sup>

<sup>23</sup> Bayles' *The Office of Mayor in the United States*, p. 23. There is no serious effort to classify the processes in Mr. Bayles' brief discussion. The topic is one that has not received large attention from those who have discussed the mayoralty, yet in recent years its importance has been revealed on more than one occasion.

<sup>24</sup> The New York decision is cited in Bayles' *The Office of Mayor in the*

This may of course be modified in municipalities in which the charter confers or limits the power of removal in express terms.

The charters of many cities, however, expressly provide for the removal of the mayor by the council. Thus the recently adopted charter of the city of St. Louis authorizes the board of aldermen to remove the mayor for crime, misdemeanor in office, grave misconduct showing unfitness for public duty, or for permanent disability. So also do the charters of Kansas City and Seattle.

The procedure for carrying out removal by the council varies from city to city. The St. Louis charter indicates the principal steps. The charges must be specific and must be presented in writing. Accompanying them a notice is required which states the time and place of a hearing. The mayor shall either be served with the charges or the notice of these shall be published three times in a daily newspaper. The charter provides for the public character of the hearing and grants the mayor the right to appear and defend himself, either in person or by counsel, and confers upon him the privilege of the process of the board of aldermen to compel the attendance of witnesses in his behalf. The vote on the proposal to remove the mayor is to be taken by yeas and nays and made a matter of record. Three-fourths of all the members of the board must vote for removal to effect such action. In Seattle the vote to remove takes effect if two-thirds of the council support it. In Minneapolis a bare majority suffices to effect removal. In some of the states provision is made by general law for the removal of the mayor by the council. For example, in Wisconsin, the General Charter law authorizes the council to remove the mayor upon the preferment of charges against him and a hearing upon the same, the mayor having an opportunity *United States*, p. 26, footnote 2. The entire subject is treated from its legal point of view in Dillon, *Commentaries on the Law of Municipal Corporations*, Vol. II, Chap. XII, especially Secs. 460-465, 475-477, 484, 485. The citations to cases and a summary view of them in the states other than New York are to be found in Dillon, Vol. II, pp. 782, 783, footnotes 3 and 1 respectively. In the state of Michigan it has been held that a city council derives its powers from express legislative enactment and has no inherent power to remove for cause a statutory officer appointed by the mayor for a fixed term, but this would not seem seriously to impair the more generally accepted view that the authority inheres with respect to corporate officers.



to be heard in his defense. A vote by three-fourths of the council is necessary to effect removal. In the general law of Michigan governing fourth class cities the provisions are similar except that a two-thirds vote of all the aldermen elect is specified.

The second method available for the removal of the mayor involves judicial process before a court of competent jurisdiction. Of course the safeguards which have been thrown about removal by the council have tended to give that method the appearance of a judicial proceeding.<sup>25</sup> The word "impeachment" is used in the charter of Seattle thus implying the organization of the council as a court of impeachment. But procedure in cases of this kind is very similar to that which obtains in the cities where the terms "impeachments" and "court of Impeachment" are not employed. The council really acts as the representative body of the corporation rather than as a court.

The courts which are vested with the power to remove the incumbents of the mayoral office are not the same in the various states. In Illinois the circuit courts, or the municipal and city courts of concurrent jurisdiction, may receive and try an indictment of a mayor for "neglect, oppression, malconduct or malfeasance in the discharge of the duties" of his office and upon conviction the defendant shall be fined not more than \$1000 and be removed from office. In Indiana prosecution may be by affidavit instead of indictment.<sup>26</sup> In Scranton, Pennsylvania, and other cities of that commonwealth the court of common pleas of the proper county has jurisdiction and acts as a court of impeachment, the charges being preferred by not less than twenty freeholders of the city. The court then appoints a committee of five to make investigation of the charges. This committee has power to take and compel testimony, and to examine books. It makes a written report to the court and the latter transmits it to the select council, which then sits as a court of impeachment. A judge of the court of common pleas presides and is empowered with the authority of a court. If the court of impeachment finds the officer guilty of the charges presented the court of common

<sup>25</sup> Thus the power to summon witnesses, compel testimony, etc., the requirements respecting notice and hearing, and the provisions that the proceedings shall be a matter of record all savor strongly of a judicial nature.

<sup>26</sup> Cf. Indianapolis, Charter, Sec. 240. This section is a part of the general municipal laws of the state.

pleas is directed to enter judgment and to declare the office vacant.<sup>27</sup> The charter of the city of Norfolk, Va., provides for the removal of the mayor by the corporation court of the city, the motion for removal being instituted by a two-thirds vote of the city council and being prosecuted before the court by the council. The charter of Rochester, N. Y., substitutes the appellate division of the supreme court and requires a three-fourths vote of the council to institute proceedings.

Numerous examples might be cited to show the liability of the mayor both to judicial process and to impeachment proceedings. One of the more recent cases is that of Mayor James Rolph, Jr., of San Francisco, who was charged with contempt in the superior court on August 6, 1916. The charge was not sustained by the court as indicated in its decision reported in the *Municipal Record* of Aug. 26. The controversy arose over the operation of certain cars owned by the municipal railways over the tracks of the United Railways, a private corporation. An earlier decision had enjoined the city from operating its cars over the tracks on lower Market street and had thereby seriously impaired the efficiency of the municipal lines and had put them face to face with a possible loss in revenue of almost \$150,000 per year. The mayor had refused to obey the injunction. Mayor Bell of Indianapolis was recently charged with complicity in election frauds in the conduct of an election within the city. He was acquitted by a jury; but the contrast between the position of the governor of the state and that of the mayor of the chief municipality within the state was rendered quite clear as far as the jurisdiction of the ordinary courts of law are concerned.

One of the most conspicuous cases in recent years is that of Don Roberts, mayor of Terre Haute, Indiana. He was accused of fraud in connection with elections in the fall of 1914, and was tried and found guilty. During the course of the judicial proceedings in which he was involved he used all the power of his office to coerce witnesses and otherwise influence the course of matters before the court. For example he promptly dismissed from office those who pleaded guilty or who threatened to do so.

<sup>27</sup> *A Digest of the Laws and Ordinances of the City of Scranton* (1907), pp. 261, 262. It is difficult to see what further obstacles could have been put in the path of those who might be bent upon effecting the removal of a municipal officer.

He threw every possible obstacle in the way of the investigation. Even when convicted he insisted on the retention of his office and was impeached by the city council before removal was effected.

The power of the courts to review the decisions of the councils sitting as courts of impeachment and of lower courts which are authorized to make removals is comparatively limited. Usually appeals may not be taken upon issues of fact, but upon questions involving the jurisdiction of the removing power, or the legality of the cause assigned for removal.<sup>28</sup> The charter of Norfolk, Va., however, expressly reserves to the accused the right of appeal to the supreme court of appeals.

The practice of authorizing a state officer such as the governor to remove a mayor is current only in the states of New York and Ohio. It was recommended also by the National Municipal League in its Municipal Program, but beyond this it has received no important consideration at the hand of states or municipalities. In the New York charter the governor is authorized to direct the attorney general to conduct the inquiry respecting the mayor and pending the investigation he may suspend the mayor for a period not to exceed thirty days. This feature of the New York charter dates back to an act of 1882, and has evidently impressed itself favorably upon succeeding charter commissions, for not only was it incorporated into the present charter, but it was also retained in the charter proposed in 1909, and was expanded to include such other executive officers as the president of the council, the comptroller, and the borough presidents.

In Ohio a provision was enacted in 1913 by the assembly of that state in obedience to a mandatory provision adopted in an amendment to the state constitution in 1912. The charges are filed in the form of a petition for removal and must be signed by twenty per centum of the qualified electors as determined by the vote at the preceding general election. The charges are deposited with the judge of the court of common pleas of the county and the defendant is to be served with a copy thereof either by the court or by the direction of the governor at least ten days before the hearing thereon. The hearing is to be had within thirty days and the proceedings are to be public. The decision is to be made public with the reasons therefor and is to be filed

<sup>28</sup> Dillon, *Municipal Corporations*, Vol. II, p. 815. (Fifth Edition.)

for record in the office of the secretary of state. In the case of the decision by the governor, the decision is final, but in the case of a decision by the court of common pleas there is an appeal reserved to the court of appeals. In 1915 complaints were made to Governor Willis against Mayor Keller of Columbus. The governor issued a formal statement announcing his refusal to take any action and stating that he would take a similar attitude with regard to the mayors of other cities concerning whom objections had been raised. The position taken by the executive of the state was that only dangers of a positive nature, such as pillage, disorder, and the like, would justify the exercise of the authority conferred upon him. He justified his action by the necessity of maintaining the right and the responsibility of municipalities to govern themselves. Moreover the remedy of judicial process was pointed out as available and the inference is that this method is more desirable except in rare cases. Such an interpretation of his authority by one governor does not, of course, bind his successors to do likewise. It establishes, however, a sound precedent and one that should have a wholesome influence in the municipal life of the state by discouraging the tendency of dissatisfied portions of municipal electorates to run to the state for relief from undesirable conditions instead of working out their own salvation. As an aid to the latter the removal of a mayor by the governor has little to offer and constitutes in the hand of a willing state executive a real menace to municipal self-reliance.

The recall as a method for getting rid of municipal officers, including mayors, whose continued occupancy of public office is open to serious objections has met with widespread favor among municipalities in every part of the country and under each of the principal forms of municipal government. While it is often associated with the commission form, probably because it has usually been incorporated as a feature of the commission plan, yet its origin and earlier development were under the mayor system, and it has since been made a feature of the mayor and council plan in numerous cities and in a number of the states. The value of the recall appears to lie rather in the possibility of its use than in the likelihood that it will be used, tho it has been used effectively many times. There is no question but that it



has been an effective means of encouraging a sense of responsibility on the part of municipal executives as well as other holders of positions of public trust and responsibility.

There are two principal forms in which the recall has been adopted in cities: first, the original form as it appeared in Los Angeles, and as it exists with but minor modifications in most of the cities which have adopted it; and second, the Boston form of the recall as expressed in the revised charter of 1909.

The recall as developed in Los Angeles provides for the recall of both elective and appointive officers in the municipal service, including, of course, the mayor. The election to recall the mayor is held upon petition of twenty per centum of the entire vote cast for all candidates for the office at the preceding mayoral election. Such petition is addressed to the municipal council and filed with the city clerk, and contains a brief statement of the reasons for which removal is sought. The petition may not, however, be filed earlier than three months after the incumbent has entered upon his term of office. The statement of reasons given with the petition is not subject to review but the petitions are subject to the examination and require certification at the hands of the city clerk. In case they prove to be deficient, it is permissible to amend them. The sufficiency of the petition is in no case subject to review by the council. The latter body, under the mandatory provisions of the charter, is required to call a special election upon its receipt of a recall petition, properly certified. The charter specifies that the election must be held not less than fifty nor more than sixty days after the date of certification, except that the recall election may be combined with any other general or special municipal election that may be held within the sixty day period.<sup>29</sup>

The ballot for the recall of mayors in Los Angeles contains the following question: "Shall (inserting name of officer sought to be removed) be removed from the office of mayor by the recall?" Opposite the question appear the words "yes" and "no" with voting squares. There also appear upon the ballot the names of those who have been nominated as candidates for the office in

<sup>29</sup> See the provisions of the charter of Los Angeles, Sec. 198. For the provisions regarding the form, mode of signing, filing, examination, and certification of petitions see the selections dealing with the initiative petitions, Secs. 198a and 198b.

case the incumbent is recalled. These nominations are made by petition, except that the name of the incumbent is placed upon the ballot as a candidate unless he resigns his office or declines to be a candidate. If a majority of the electors voting on the question vote "yes," the officer is removed from office upon the declaration of the returns by the council, and the candidate receiving the highest number of votes for the office is elected to succeed him. The incumbent may be recalled and reelected at the same election and under such circumstances continues in office for the balance of the term for which he was first chosen. If another candidate is elected he serves for the same period. The recall of a mayor or his resignation in face of a recall bars him from being appointed to office for a period of two years.<sup>30</sup>

Such is the recall as applied to the mayoralty in Los Angeles. The provisions in the charters of San Francisco, Seattle, St. Louis, and Cleveland are strikingly similar to those in Los Angeles. San Francisco provides for a petition signed by thirty per centum of the entire vote cast at the preceding mayoral election and requires that the election be held within forty days. Seattle requires the signature of twenty-five per centum and makes the election mandatory within forty days. St. Louis requires twenty per centum of the registered vote at the time of the preceding mayoral election with the further requirement that twenty per centum of the registered voters in each of at least two-thirds of the wards of the city must be secured and the date for the election is fixed at not more than ninety days from the time the board of election commissioners has mailed notice of the sufficiency of the petition to the incumbent whose removal is sought. In St. Louis the death or resignation of the incumbent at any stage of the proceedings stops the election. In Cleveland a petition for the recall of the mayor must be signed by not less than fifteen thousand electors and the sixty day time limit for the holding of the election obtains. In all the above cities except San Francisco amended or supplementary petitions may be filed if the first one appears insufficient.

The recall provided for in the Boston Charter is different from that which prevails elsewhere in that every mayor must face the possibility of a recall thru a provision which automatically

<sup>30</sup> Charter of the city of Los Angeles, Secs. 198q, 198r, 198s, 198t. The provision regarding the method of nomination is found in Sec. 198u.

places the question "Shall the mayor be recalled?" upon the ballot at the end of the second year of his four year term. The regular November election is used for the purpose of testing the opinion of the electors upon this question. If fifty per centum of the registered vote of the city is cast "yes" then the mayor must stand for a reelection at a recall election following in December. In practice the Boston plan has never proven effective enough to recall a mayor, despite a hard fight put up against Mayor Fitzgerald in 1911. The total vote for the recall was approximately only one-third of the registered vote, though it constituted a majority of the vote cast on the recall proposition.<sup>31</sup> The results which have been obtained with the Boston recall have apparently not appealed to municipal charter makers elsewhere for it has had no vogue outside the city of its origin. The theoretical values which attach to the Boston recall are, however, worthy of consideration. The mayor is assured that he will have a long enough period in which to inaugurate his policies and make the preliminary tests thereof. If he is not recalled his continuance in office and the further development of his plan cannot be menaced or interrupted by the machinations of his enemies, either personal or political. The insertion of the recall proposition upon the ballot automatically obviates the effort to secure signatures for the recall petition, prevents the intimidation of those who would like to sign such a petition and minimizes the rancor and bitterness which the application of the recall inevitably invites. Opposite tendencies must also be reckoned with. The successive efforts to put the recall into operation having failed, apathy toward such efforts even when most desirable is likely to result. The failure of a majority of those voting on the proposition to make their will effective because the inertia of a body of inactive citizens as large in number as their active opponents has been thrown in the scales against them is most discouraging. Practically speaking the Boston recall, like that obtaining in the commission governed cities of Illinois, becomes effective only when something akin to a political revolution against the existing authorities occurs. The comment of the *Kansas City Star* in 1911 was, "The Boston election proves

<sup>31</sup> The figures may be obtained by consulting the *National Municipal Review*, Vol. I, pp. 127, 128.

. . . that the public official who makes good need not fear the recall, even if he offends the politicians and the men who want to use his office for personal gain. He can trust the people when he knows the people can trust him." This comment tells but half the story regarding the operation of the Boston recall. The other half is that the public official known as the mayor of Boston does not need to fear the recall even under exceptional failure to measure up to his responsibilities.

It would probably be unfair, however, to indicate that the presence of the recall in Boston has accomplished nothing in the way of restraint. Doubtless the incumbent breathes somewhat more easily when the usual announcement is made that no recall has been ordered, for there is the rare possibility that it might be. This possibility, while not a matter of immediate concern to the holder of the mayoralty is nevertheless one that is ever present and politicians as astute as those in control of Boston politics are reputed to be, would not altogether overlook its presence. Were the proportion necessary to carry, lowered to a majority of the total vote cast either at the election or on the proposal to recall the Boston plan would become an effective weapon with which to secure responsible and decent city government — at least so far as the recall can ever become such a weapon.

### *The Term of Office*

The mayor's term of office has tended to become longer as the amount of power entrusted to him has increased. There are notable examples in which this has been true. The six largest cities in the country have adopted the four year term.<sup>32</sup> There are also many lesser municipalities operating under the mayor system which have adopted the four year term.<sup>33</sup> In one the term is five years.<sup>34</sup> But the most favored term appears to be two years, except in New England where some cities still retain what was formerly customary, a one year term. Thus out of thirty cities selected so as to represent the country geographically fifteen of them elect their mayors for two years. The general municipal

<sup>32</sup> New York, Chicago, Philadelphia, St. Louis, Boston, and Baltimore.

<sup>33</sup> These are widely scattered. For example, Los Angeles, Calif.; Columbus, Ohio, and Charleston, S. C.

<sup>34</sup> Jersey City, New Jersey. Munro, *Government of American Cities*, p. 214.



acts of a number of the states such as Illinois, Indiana, Wisconsin, and Nebraska specify a term of two years.<sup>35</sup>

Once the longer term has been adopted there appears to be no disposition to return to the earlier practice of short terms.<sup>36</sup> In general, the longer term has given satisfaction, though it has not achieved all that its advocates hoped and prophesied that it would. It was hoped that the longer term would serve to increase the importance of the office to such an extent that the electors would be stimulated to see that better men were chosen to fill it. Yet it is hard to affirm that any such result has been achieved. The memory of the election of Van Wyck in New York is fresh as an instance of the failure of the newly created four year term to do just this thing. The lengthened term has probably justified itself in that it has made it possible for the mayor to be more of an administrator and less of an active politician, it has given the holder of the mayoralty a better chance to demonstrate his policies and manifest his abilities, and it has tended to allay somewhat the pressure of frequent municipal campaigns. On the whole, too, it has prevented the frequent disruption of the municipal service thru changes in the office of chief executive and has therefore resulted in more uniform and perhaps better service. There is a sense, too, in which length of service tends to produce improved service. Official life and the constant, tho often feeble sense of responsibility which is ever present tends to attract so conspicuous an officer as the mayor toward higher levels of thought and conduct. Respect for decency and the public interest is sometimes acquired thru long years of service in positions of eminence and trust. The difference between the two year and the four year term consists partly in that this factor is allowed opportunity to get in its work, and in the case of longer service the force of the acquired point of

<sup>35</sup> An exception to the rule that one year terms are more common in New England is Montana in which state there is a constitutional provision against the term exceeding two years and where the legislature under general law has provided for a one year term. *Laws of Montana*, Sec. 4748. (*Political Code*.) Also *Constitution*, Art. 16, Sec. 6.

<sup>36</sup> The charter of New York City has undergone one change from the four to the two year term, but the latter has since been altered to provide for the longer period.

view may lead to a practical break with former practices and associates.<sup>37</sup>

The number of terms that a mayor may serve is not determined by any general tradition. In practice reelections are quite common, tho the number of single terms is sufficiently large to indicate that second terms do not follow as a matter of course. The incumbent generally has the advantage of a well organized group that is immediately interested in his reelection. In smaller cities opposition parties often go begging for candidates. Especially is this true where the salaries attached to the office are not attractive in themselves, and where no vital question of local public policy has arisen to stir up an active contest. In Pennsylvania and Indiana reelection is prohibited, at least for successive terms, but there is no evidence of any wide approval of this practice. It should be said, however, that the persistence of the single term notion is but an evidence of the strength which still characterizes the popular fear of executive power or tyranny in local administration. The development of longer terms for the mayoralty will command wider support in proportion as the methods for effective control over executive action by public opinion are perfected. The advantages of the longer term are pretty well appreciated in cities of size and importance. It is in these that opportunity for trying out policies and time for acquiring skill and mastery in administrative work are most imperative. The prospect for the future favors the longer term and this, in turn, promises increased effectiveness and responsibility on the part of the municipal executive.

### *The Filling of Vacancies*

The subject of vacancies involves a consideration of what constitutes a vacancy and what are the methods by which it is filled.

<sup>37</sup> The career of Carter H. Harrison, Jr., former mayor of Chicago, illustrates this tendency. During his six terms as mayor of Chicago he alienated one by one the forces which had been mainly instrumental in enabling him to acquire public office. At the same time he failed to acquire the positive attitude toward reform which would bring him new strength. His elimination from active candidacy in the primaries of his own party by a decisive majority in favor of his opponent witnessed to his isolation, too good for a host of former supporters, not good enough for the many who desired more than negative virtues.

Vacancies in the office of mayor are of two kinds and they are usually treated differently. The first kind is the temporary vacancies. They are those which are caused by the mayor's absence from the city temporarily, by his being incapacitated for his duties thru illness or accident of a temporary nature, or by his suspension from his office during the course of an investigation. The permanent vacancies are those which occur by reason of the death or permanent disability of the incumbent, his resignation, his removal from office thru some one of the methods already described, or, in very many cities, by his change of residence from the city in which he holds office to some locality outside its limits.

Temporary vacancies are commonly filled by the president or chairman of the council in cities where the mayor does not preside over that body. Thus in Madison and other first class cities in Wisconsin, in Rochester, St. Louis, and many other cities this practice is provided for in the municipal charter, or in the general law of the state. In the case of St. Louis and Baltimore the presiding officer of the board of aldermen must meet the same qualifications as the mayor, a precaution which does not seem to obtain in all cases.<sup>38</sup> There are exceptions to the practice of permitting the council to fill temporary vacancies in the mayoral office. In Indianapolis and other Indiana cities which have the office of controller the latter or the city clerk acts as mayor in case the chief executive is unable to fulfil his duties. The Cleveland charter provides for the temporary performance of the mayoral functions by the director of the department of law.

Permanent vacancies are not, as a rule, provided for in the same way as temporary ones. In a few cases no provision is made for the popular election of a new incumbent, but as a general thing the practice is to choose a successor at a special election.

<sup>38</sup> See charters as follows: St. Louis, Art. 4, Sec. 3; Baltimore, Sec. 214. The president of the second branch of the council succeeds to the mayoralty in case of the absence or incapacity of the mayor. The charter of Seattle illustrates the failure to require the same qualifications of the temporary successor as are required of the mayor himself. The Seattle charter imposes a tax paying qualification upon the mayor, but no such qualification is imposed upon the members of the city council, the president of which is chosen from among its membership and may succeed to the mayoralty and all its powers. See Art. 4, Sec. 2, Subdiv. D, and Sec. 6, First; Art. 5, Secs. 1 and 11.

unless the former mayor's term is about to expire. For example, in Minneapolis a vacancy in the mayoral office is to be filled by special election within twenty days after the vacancy occurs.<sup>39</sup> In Illinois the general municipal act provides for the holding of an election if the vacancy occurs one year or more before the end of the term. If less than a year of the term remains the council is authorized to elect one of its members to act as mayor. Practically the same provisions obtain in Pennsylvania cities, in Los Angeles, and in the municipalities of Wisconsin and some other states. In such cases the council is often authorized to make appointment to fill the vacancy temporarily. Where possible elections to fill vacancies are made to coincide with the regular elections; but as in Minneapolis and in Norfolk, Virginia, limits within which the elections must be held are not uncommon.

On the other hand it is sometimes the practice to fill a vacancy in the mayoral office by authorizing the council to elect for the unexpired term. Thus in San Francisco the council is authorized to fill the vacancy by election, the incumbent to serve until the next general municipal election. There is no limitation as to who may be elected except the qualifications imposed upon incumbents selected in the ordinary way.

In cities in which the mayor does not preside over the council, the usual custom is that the president of that body, or of one of its branches in case there is more than one, shall succeed to the office of mayor in the event of a vacancy. The charter usually covers this contingency and provides also that the requirements and qualifications which are demanded of the mayor must also be satisfied by his successor. In many cities in which these conditions obtain the president of the council is elected by popular vote. Baltimore, New York, Rochester, and Seattle fill permanent vacancies in this manner. The new St. Louis charter, however, provides for the succession of the president of the board of aldermen only temporarily, tho the president is elected at large as in the other cities mentioned.

Still another practice is to have the succession fall upon some officer of the city government outside of the council. Thus in the cities of Indiana the controller succeeds, except in cities which

<sup>39</sup> Charter, Chap. II, Sec. 2. Exception is made so as to permit merging this special election with a general election if the latter occurs not less than ten or more than sixty days from date of the vacancy.



have no such officer, in which cases the councils elect. In the comparatively recent charter of Cleveland a similar method of filling a vacancy was adopted, the order of succession being elaborated rather fully, and the mantle of the chief executive falling in turn upon the heads of departments appointed by the mayor.<sup>40</sup> This feature of the Cleveland charter is unique in that it is possible to have a mayor whose selection for public office has not been submitted to popular vote, a contingency that is guarded against in almost all charters that do not entrust the choice of a successor to the council. There seems to be no good reason, however, for preferring council to mayoral selection of one to whose lot it falls to carry out the policies approved at the time the mayor was elected.

There seems to be no tendency toward uniform methods in the selection of those who succeed to a vacancy in the office of mayor. Variation in practice may be explained, perhaps, by the fact that in this country the electorate is content to take a chance on what it will get in the event of a vacancy in executive office. Only thus can one explain the nonchalance with which the nomination and election of weak candidates for the vice-presidency and for the lieutenant governorships are countenanced in national and state politics. In fact the question of succession to the mayoralty was not one of great moment in the earlier history of the office and the methods of filling vacancies have been largely the inheritance from times when the importance of the position was not as great as it has become today. The proper and most desirable method of handling vacancies is one that has not yet been found. There are more or less serious objections to each of the methods now in vogue. Election by councils which have tended to become less influential and less able appears to be rather anomalous when the growing power and position of the mayor is considered. Popular election imposes an added burden of expense upon the municipality which the financial circumstances of most American cities can ill support. The succession of administrative officials who have been appointed by the mayor appears to be a step in the direction of recognizing the increased prominence of the

<sup>40</sup> Cleveland, Charter, Sec. 74. The order of succession is as follows: Director of law, director of public service, director of public welfare, director of public safety, director of finance, and director of public utilities. There is little likelihood that Cleveland will soon be without a mayor.

office and the authority of its holder. The succession of the president of the council gives no adequate assurance of satisfaction and serves only to vacate another rather important office, leaving it to be filled usually by the council. It is not certain that the election of vice-mayors would meet the situation in view of state and national experience. On the whole the Cleveland plan appears to point the way in the right direction, especially where the method exists in conjunction with efficient methods for insuring executive responsibility thru adequate process of removal, such as impeachment, judicial action, or the recall. As these processes exist today they do not give entire satisfaction. Their development as agencies for securing better controlled executives in mayor governed cities, or the substitution for them of some better means, is highly desirable.

The successor of the mayor inherits all of his powers in the case of a permanent vacancy, but in the event of temporary vacancies it is not uncommon to restrict the authority of the temporary incumbent. In New York City the president of the board of aldermen when temporarily acting as mayor during the sickness or absence of the mayor is forbidden to exercise the appointive and removal powers within thirty days, or to sign, approve, or disapprove resolutions or ordinances within nine days. The Seattle charter, on the other hand, expressly clothes the acting mayor with all the powers of the mayor even during temporary vacancies while other charters appear to assume that he shall enjoy full authority.

### *Salaries and Bond*

The mayors of practically all communities of size and importance now receive a salary. Not so many years ago the office of mayor was a fee office and the transition to the fixed salary has become the rule only within the past quarter century. In cities where the judicial functions of the mayor are still a matter of some consequence the fees are still collected, tho in case a salary is paid these fees are usually turned over to the city. In some communities mayors still serve with little or no pay and in many states they are dependent upon the will of the council for the amount they receive.<sup>41</sup> The practice which obtains in the larger cities and in an increasing degree in the smaller cities is to fix

<sup>41</sup> This is the practice in states which create municipal corporations under general law, at least with regard to the classes of smaller cities. Compare

the mayor's salary in the municipal charter. This is usually the custom in those states in which cities may draft their own charters under municipal home rule privileges, while it is notable that in charter enactments for great cities the salaries are always specified.<sup>42</sup> It does not appear, however, that there is any standardization in the remuneration paid. With larger responsibilities and greater power the salary of the mayor of New York City is three thousand dollars less than that paid the mayor of Chicago and but twenty-five hundred dollars more than that paid by Dayton, Ohio, to its city manager.<sup>43</sup> With less than one-fourth the population of Minneapolis, Minn., Evansville, Indiana, pays its mayor twice the salary paid in the former. Similar instances might be multiplied to witness to the absence of uniform standards in calculating the value of the mayoral services of the reward to be offered for them.

There is some difference of opinion as to whether salaries should be declared in the charters or left to be determined by the municipal council. The municipal league program endorsed the latter plan<sup>44</sup> and safeguarded the executive by providing that the salary should not be changed during the term of an incumbent so as to operate either against him or in his favor. This proposal followed in the main the practice which already obtained

for example, the situation in Illinois. Cities under ten thousand commonly pay their mayors from \$300 to \$600. Mendota gained some notoriety in 1915 by the generous act of its council in raising the mayor's compensation from an average of sixteen cents per day to an average of a little less than one dollar per day or three hundred dollars per year.

<sup>42</sup> The mayor of New York City is paid \$15,000; the mayor of Chicago, \$18,000; the city manager of Dayton, \$12,500; other cities pay as follows: Boston, \$10,000; Minneapolis, \$2,000; San Francisco, \$6,000; Philadelphia, \$12,000; Evansville, Ind., \$4,000; Utica, N. Y., \$1,600. The list might be increased indefinitely. Some of these amounts are fixed by charter; others by ordinance. The charter of Madison, Wis., provides that the mayor shall receive no salary. *Cf.* Sec. 26.

<sup>43</sup> In general it may be noted that the tendency appears to be to pay fairly good salaries in those cities which are most alive to the need for capable administration and which have put forth some effort to secure it. This, however, hardly explains the fact that Chicago pays its mayor the largest salary received by any municipal executive in the country. The good salaries which are paid to commissioners and city managers are, however, in line with the development noted.

<sup>44</sup> Art. 3, Sec. 8.

in many of the general municipal acts of the states. As far as the amount of the salaries paid is concerned there seems to be little in actual practice to indicate that one method has any advantage over the other. Charters and councils alike are now generous, now parsimonious. Local conditions and standards seemed to have played a prevailing part in determining the salaries paid, tho doubtless the present tendency to pay more liberally is having a country-wide influence. Authorities agree that salaries in American cities compare favorably with those in the cities of the principal European countries, especially France and England, in neither of which do the mayors receive substantial remuneration.

American experience seems to demonstrate one thing with respect to salaries. It is better to pay good salaries, or no salaries, than to pay low ones. However low they may be they attract the professional politician, the individual who is in politics for a living. In smaller communities good mayors will be found who will serve without salary whereas the same man could not be attracted by a small remuneration. On the other hand where the office demands the entire attention of the incumbent or any large part of his time and tho it is wiser to offer a salary commensurate with the responsibilities imposed. It will prove cheaper in the long run, a statement that is abundantly demonstrated from the experience of commission governed cities.

Many cities and some states thru their general laws require the mayor to give bond for the proper fulfilment of his duties. The amount of the bond is sometimes fixed in the state law,<sup>45</sup> sometimes determined by the municipal council.<sup>46</sup> The premiums are as a rule paid from the municipal treasury. In a number of cities no provision is made for a bond from a mayor, but he is charged with careful oversight of the bonds given by other members of the municipal staff.<sup>47</sup>

<sup>45</sup> The general law in Illinois provides that in no case shall the bond be less than \$3,000.

<sup>46</sup> This is the more general practice. See the charter of Cleveland, Sec. 190, and of St. Louis, Art. 8, Sec. 4.

<sup>47</sup> Cf. Los Angeles, Charter, Art. 5, Secs. 62, 64. Under Sec. 63 it is possible the council might compel the mayor to give bond, tho Sec. 64 renders such an effort of doubtful validity. No bond is specified in Kansas City.



*Induction into Office*

The process by which the mayor is inducted into office constitutes a ceremony which is usually regarded with little attention. In general it consists of the administration of an oath by some competent or authorized officer in the state or municipal service. In Boston the oath is administered by the justice of the supreme judicial circuit or by a judge or justice from some other court of record. The administration of the oath takes place before the municipal council and a certification of the act is entered upon the journal. The custom provided for in Kansas City differs from the above in that the oath is administered by the city clerk or other municipal officer, in the presence of the common council and citizens who may desire to attend. The oath to be taken is the same as that required of common councilors. In New York and Cleveland the practice is similar to that of Boston, except that the oath must be subscribed to and filed in the office of the city clerk. In Philadelphia the record of the oath having been taken must be filed with the controller.

The content of the oath or affirmation appears to differ among municipalities. The New York charters require that the mayor take and subscribe to the declaration "faithfully to perform the duties of his office." The following declaration is used in many cities: "I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States and the Constitution of the State of———, and that I will faithfully discharge the duties of the office of Mayor according to the best of my ability."<sup>48</sup> A recent variation from this form is that required by the St. Louis charter which specifies a declaration including the following items: (1) The mayor has all of the qualifications for the office named in the charter; (2) he is not subject to any of the disqualifications for the office; (3) in addition to the United States Constitution and that of Missouri he will support the St. Louis charter and ordinances; (4) he will be influenced in the appointment, promotion, demotion, suspension, or discharge of officers or employees by the consideration of fitness only; (5) he will not expend or authorize the expenditure of

<sup>48</sup> Los Angeles, Charter, Art. 2, Sec. 10. See also the municipal laws of Illinois for the same statement.

money otherwise than for adequate consideration and efficient service to the city.<sup>49</sup>

While the constitutional oath appears to be the general practice, supplemented here and there by special provisions inserted by charter makers, it has not been unknown for councils to be authorized to demand an additional oath, or for no oath whatever to be necessary.<sup>50</sup> On the other hand many charters specify that failure to take the oath of office works forfeiture of the title which the mayor elect may have to it.

### *Miscellaneous Features*

In addition to the foregoing constituent features of the mayoral office there are miscellaneous items which are more or less common and which are properly noted at this point. In all cities of size or importance it is customary for the mayor to have secretarial assistance of a private and confidential character provided for him. The extent of this assistance varies according to the size of the city and the conditions which obtain. In San Francisco the mayor appoints a stenographer, an usher, and a private secretary to aid him in caring for his duties. The mayor of St. Louis under the old charter was given an office force of five: a secretary, an assistant secretary, a stenographer, a page, and a janitor,<sup>51</sup> and over them his power was complete. But no provision for a staff as formidable in numbers was made in the charter adopted in 1914. In fact the matter appears to have been left to the determination of the municipal council. Charters, indeed, quite frequently omit to mention this custom. Often they declare that the mayor shall have his office in the city hall; and in Indiana the mayor is expected to devote regular periods of the day to office hours.

Moreover the mayor may frequently call to his assistance those who are specially qualified to render aid, either in the capacity of citizen groups with advisory functions or as in the case of St. Louis a certified public accountant to help him maintain the annual audit of the financial affairs of the city, a duty imposed upon him by charter. The creation of "the mayor's eye" in

<sup>49</sup> St. Louis, Charter, Art. 8, Sec. 3.

<sup>50</sup> Bayles, *The Office of Mayor in the United States*, pp. 25, 26, with citations, especially those in the first and last paragraphs.

<sup>51</sup> The salary budget of the five was \$5,220 per year.

New York witnesses to the tendency to augment the organization of the mayoral office so as to enable the holder to perform his duties more effectively.<sup>52</sup>

The mayoral constitution today gives evidence of some development when compared with what it was in the last decade in the nineteenth century. While there have been few changes in the legal requirements imposed upon candidates, the extra-legal qualifications demanded have been appreciably elevated owing to the increasing alertness and intelligence of influential and public spirited citizen groups. Nomination by petition or by direct primary have practically displaced the delegate convention, tho the influence of organized political parties has not been greatly weakened. Some gain has been achieved thru non-partisan elections, but it is a gain that is maintained by eternal vigilance.<sup>53</sup> On the whole there has been progress in the direction of ease of nomination and the establishment of a direct and immediate bond between the mayor and the electorate. In part this is due to the application of the recall to the office as a means of supplementing the processes of removal which were available a quarter of a century ago. Other methods of removal do not appear to have increased in importance or effectiveness. The movement for longer terms has continued unabated and two and four year terms are the most common today, with the four year term gaining in popularity. Coincident with this has been the disposition to increase salaries until today the American mayor is well in the lead of his contemporaries in other countries. On the other hand there is an impressive want of standardization, many cities remaining parsimonious, others paying more than the circumstances seem to require. In general the constitution of the office exhibits no such radical changes as characterized its progress in the latter half of the nineteenth century. The changes that have been observed have rather seemed to popularize and strengthen the office and to accentuate its tendency to displace the council as the most effective organ in municipal democracy. These changes further witness to the demand for responsible and responsive organs of government in American cities.

<sup>52</sup> This institution is discussed more fully in a later chapter.

<sup>53</sup> The Municipal League of Seattle in the spring campaign of 1916 refused its endorsement to Socialist candidates for municipal office on the ground that they were running on a party ticket and thus violating the spirit of the non-partisan elections act.

## CHAPTER IV

### THE MAYOR AND ADMINISTRATION

“An administration which should neither court the few, nor stand in awe of the many, which should identify itself exclusively with the rights of the city, maintaining them not merely with the zeal of official station, but with the pertinacious spirit of private interest; which in executing the laws, should hunt vice in its recesses, turn light upon the darkness of its haunts, and wrest the poisonous cup from the hand of the unlicensed pander; which should dare to resist private cupidity, seeking to corrupt; personal influence, striving to sway; party rancor, slandering to intimidate; . . .”<sup>1</sup>

In American cities the mayor is the head of the administration, a position which he holds by reason of charter or statutory provisions. It is a responsibility that is the product of his comparative successes and the occasion of his most lamentable failures. It was clearly defined by the end of the nineteenth century, but has not ceased to develop since that time, except in those cities now quite numerous in which the mayor plan has been supplanted by other forms of government. Thru the relation which exists between the mayor and administration municipal government has become more sensitive and more responsive to the public will. If, as one prominent observer of American government says, the cities of the United States are today better governed than are the states of the Union, the explanation must be sought in their administration.<sup>2</sup> The purpose of this chapter is to describe the nature and extent of the mayor's responsibility in administration, to define the powers he enjoys and the methods by which they are exercised, and to note the forces which continue to augment the importance of the mayor as an administrative officer.

<sup>1</sup> This excerpt is taken from Josiah Quincy's farewell address as mayor of Boston. See his *Municipal History*, pp. 261, 262.

<sup>2</sup> An assertion made by Mr. Elihu Root to the N. Y. Constitutional Convention in 1915.



*General Authority*

The nature of the relation which the mayor bears to administration may be either advisory, supervisory, or active and managerial. Quite commonly, indeed, the actual practice of incumbents of the office will exhibit all of these characteristics. In the case of one department the relations maintained between the mayor and the head of the department are chiefly advisory. The supervision is casual or perfunctory. Active interference is not dreamed of. In the case of another department the supervisory relation of the mayor is constantly felt. In still other cases the interference of the mayor in the direction, plans, and operation of municipal departments is so constant as to make his relation an active one and his counsel become orders rather than advice. The advisory position of the mayor is illustrated by the career of Mayor Blankenburg of Philadelphia. When he appointed each of his directors he said to them: "You have absolute control of your department. The responsibility must be yours. Come and consult me whenever you wish, but for results I look to you."<sup>3</sup> Mayor Mitchel of New York expressed this conception of the relation of the mayoralty to administration chiefs in somewhat different terms as follows: "The theory of the relation of the mayoralty to these departments in the past has been this: That the mayor should appoint the head of the department and send him out to make good, send him out to administer; if he got into trouble then try to help him out; if he got into too serious trouble or failed to make good or did something calling for such action, then remove him and appoint a successor. That theory has been due very largely to the enormous amount of time which the mayor must devote to other duties of his office, to his participation in the work of . . . various boards and commissions, to the time he must devote to interviews in his office."<sup>4</sup>

Municipal charters define the mayor's responsibility for supervision in the broadest terms. In Baltimore it is provided that

<sup>3</sup> Quoted from an article entitled "What is the City?" by Mr. Blankenburg and published in the *Independent*, Vol. LXXXV, pp. 84, 85 (January 17, 1916).

<sup>4</sup> "The Office of Mayor," by John Purroy Mitchel, mayor of the city of New York, published in the *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, pp. 479-494. (April, 1915.) See p. 491 for the quotation.

the mayor has "general supervision over subordinate officers." These provisions are typical of very many other charters. A variation is found in the charter of Tacoma which provides that the mayor has supervision of "departments, officers and employees" and which charges him to "vigilantly observe the official conduct of all public officers."<sup>5</sup> The degree with which this duty is complied with depends very largely upon the local traditions of the office in the case of ordinary men, and upon the force and personality of men of unusual talent and determined purpose. Local conditions also determine the degree of supervision which is exercised. Quite frequently it is active and intelligent with respect to departments in which matters of immediate political or community interest are being dealt with, and at the same time it may be quite indifferent with regard to departments and officers further removed from the public eye. In larger cities it is small wonder that the supervisory duties of the mayor are not performed with equal effectiveness thruout the entire organization of government. The means which have been placed at his disposal have made it impossible in most cases to comply with the provisions of the charter in a literal and active sense. In some places the deficiencies have been more keenly appreciated than in others and the means supplied. But in view of the characteristic American belief in the all sufficiency of mere declaration of desire in law the majority of the cities are still without those agencies which enable a mayor to become a real supervisor in administration. It is for this reason that in practice his advisory relationship is more commonly in evidence. The theory of his supervision as expressed in charters implies an omniscience and a capacity for being in several places at the same time that taxes the strength and ability of the most gifted incumbents of the office. Adequate personal supervision becomes impossible except in spots or at odd seasons. Effective managerial machinery is largely wanting, and perfunctory oversight or casual review is the inevitable result.

Nevertheless the mayor's part in administration is sometimes more than advisory or supervisory in its character. Occasions arise which appear to demand his participation in it. At other

<sup>5</sup> Tacoma, Charter, Art. 4, Sec. 51. The San Francisco charter states that the mayor shall "vigilantly observe" the official conduct of all public officers. Art. 4, Chap. I, Sec. 2.

times he participates whether the occasion seems to warrant his action or not.<sup>6</sup> Such activity is more likely to occur in connection with police administration. Charters very often lay upon the mayor the express duty to see that proper measures are taken to preserve peace and order,<sup>7</sup> or by investing in him complete power of removal from office, make possible his interference in all parts of the administration if he is so minded. It is noteworthy that one of the most successful mayors in recent years believed in this direct participation. Said Mayor Mitchel of New York City, “. . . it has seemed to me that the mayor ought to be more than merely the head of the city government sitting in the City Hall ready to receive the public, appointing the heads of the departments and sending them out to make good independently, or to fail independently; that he ought to be really the business manager of the city of New York, that he ought to have the close contact that would enable him to become an effective business manager. There are problems of pure administration in the departments that ought to come back to the mayor for settlement. There are problems of policy in the departments that ought to come back to him for settlement.”<sup>8</sup>

One can, without strain, imagine the spirit of Josiah Quincy, to whom active participation in administration was of the essence of his oath of office, rejoicing in the utterance of doctrine like the foregoing. It is a doctrine that becomes increasingly difficult of application as the city grows in size and as the problems of government become more numerous, complex, and technical. The mayor of the smaller community quite commonly takes an active part; for the mayor of millions the possibility of interference is limited, unless special instruments are provided for that purpose.

The extent of the administrative authority of the mayor is, indeed, almost as great as that conferred upon the city itself. It would be incorrect, however, to say that he exhausts this authority even where he is most powerful. On the other hand there

<sup>6</sup> The mayor of Aurora, Ill., attained something more than local fame in 1916 by taking charge of some of the municipal departments and announcing that he was “king.”

<sup>7</sup> Note for example the charter of San Francisco, Art. 4, Chap. I, Sec. 2.

<sup>8</sup> *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, p. 492. (April 1, 1915, p. 14.)

are few lines of municipal activity that do not feel his power and influence, either directly or thru his appointees. General grants of authority are everywhere the rule, tho usually supplemented and defined by specific enumerations. The definition of those powers is of course far from being uniform thruout the country, tho certain powers are generally recognized in some form or other. Of these the most far-reaching is that of appointing the heads of administrative departments, and, in many cases, members of municipal boards and commissions and minor officials. Complementary to this power is that of removal, assuring the mayor of the continuance of harmony and coöperation in his official family. In almost all cases he is empowered to call meetings of the most important officials, and in some cases this is made a duty. He enjoys the privilege of investigating all official acts, records etc., and with this is associated the power to require regular and special reports. By some charters the mayor is made a member *ex officio* of appointive boards, tho not always with the right to vote. The mayor may institute and maintain suits in behalf of the city against delinquent officials. He may, in most cities, reinforce the ordinary police by calling upon the governor for the aid of the militia. In the administration of justice he is not so important as he once was; but he is still in many cities clothed with the authority of a justice of the peace, an authority that is exercised with varying degrees of activity. He may remit fines and penalties imposed for violation of municipal ordinances.

The actual importance of the mayor's power in the field of administration is of course affected also by his relation to the council. The favor of the latter body is rarely disassociated from his policies, and is secured by dealing gently with this constituent and by generous distribution of the patronage of his office, a situation which most municipal executives accept as unblushingly as has the President of the United States in his dealings with Congress. Finally the position of the mayor in local politics has a direct bearing upon his administrative influence and authority. If he is but the figurehead for the real and dominating personality in local politics, if he serves simply as the decoy to attract the electors or to receive their wrath, if it is his part to dream and prattle over impracticable schemes of municipal development while the real political leaders direct the



performance of the work at hand, his position as head of the administration becomes a source of danger to the public interest.<sup>9</sup>

### *Power of Appointment*

A consideration of the powers enumerated, one by one, and in further detail, will aid in gaining a clear appreciation of their significance. The power of appointing other officers in the municipal service is not only the most important but it is generally the most highly developed. Where it has gone furthest in its evolution the administrative chiefs stand in the relation of cabinet members grouped about the mayor. The principle followed is similar to that of presidential government as differentiated from ministerial government. The recognition of this cabinet form of organization has gone much further in American cities than it has in the state governments, and the term "mayor's cabinet" is frequently used in describing the relationship which is established by reason of his appointing power and the consequent responsibility to him of the departmental heads.<sup>10</sup> The development of the appointing power has not, however, been uni-

<sup>9</sup> Such was the situation in the case of Philadelphia from 1907 to 1912. The mayor's "principal interest in municipal affairs was in a series of magnificent dreams, which he called comprehensive plans," for a splendid art gallery; a huge "convention hall" with a stadium and aviation field; the moving of the Schuylkill river, which bisects the city; the laying out of boulevards and diagonal thoroughfares; and the creation of a great system of wharves, warehouses, and industrial establishments. Not one of these grandiose plans ever got beyond the paper stage; but while the mayor mooned and dreamed over them the political leaders who had put him in office and named the subordinates whose commissions he signed were busy with practical things. From "Philadelphia's Strabismus," by George W. Norris, *The Outlook*, Vol. CXI, pp. 1049, 1050 (December 29, 1915). On the whole this picture is not overdrawn, tho Mr. Norris was a member of the Blankenburg administration which succeeded the one described. The danger to the public interest in this case arose from the activities of two contractors who were then and are now the real political leaders in Philadelphia's administration and whose activity in exploiting the municipality has become notorious.

<sup>10</sup> The report of one of the National Municipal League committees at the meeting held in Los Angeles in 1912 advises that in every large city the mayor ought to have cabinet officers to advise him and apply to the group described by the term "the mayor's cabinet." From a reprint of the report published in the *Cleveland Municipal Bulletin*, p. 16, September, 1912.

form in American cities, and the variations which obtain are sufficiently diverse to warrant description and comparison. Especially is this the case with regard to the restrictions which in the majority of cases are imposed upon its exercise.

In many cities the mayor's power of appointment is discretionary. He is unrestrained by the legal necessity of securing confirmation of his appointments. The entire responsibility for the character of the administrative personnel, at least in the higher offices, is upon him. He becomes in fact as well as in theory the center of the municipality's executive services. This situation obtains most conspicuously in New York City and in Cleveland and represents the extreme concentration of executive power in the hands of the mayor. In another and larger group of cities the mayor's power of appointment is restricted by the necessity of having its exercise confirmed. This confirmation in most cases must come from the city council, or, in bicameral councils, from the board of aldermen. A most important exception is the city of Boston, where the appointments must be confirmed by the Massachusetts Civil Service Commission, a state authority.

The extent of the mayor's appointing power is determined by three sorts of provisions. The first vests in him the appointment of department heads and all other charter officers, boards and commissions, etc., not elective by the people, and other municipal employees as they may be provided for by ordinance. The second recognizes the authority of the mayor in the appointment of departmental chiefs, but grants to the latter the power of appointing their own subordinates. The third restricts the apparently wide sweep of the power of appointment by erecting a civil service commission the function of which is to examine and test the fitness of applicants and to select qualified individuals. The appointments to subordinate positions in the service must then be made from eligible lists supplied by the commission. The three types of provisions cited above will be discussed in turn.

Los Angeles is typical of those cities in which the appointment of all officers for whose selection the charter does not make specific provision is vested in the mayor. The exceptions specified are not numerous, but include such officials as the superintendent of the city schools who is appointed by an elective board of edu-

cation. The appointments, however, are subject to confirmation by the majority of the council.<sup>11</sup> In voting, the council members must record their votes, publicly given on roll call. Broader powers of appointment are conferred upon the mayors of New York and of St. Louis. "He shall appoint . . . all non-elective officers and all employees" excepting those whose selection is expressly provided for in other ways by the charter. In these cases the consent of the council is not required. Similar provisions appeared in the charter proposed in the report of the Cambridge, Mass., charter commission of 1913.<sup>12</sup> Except where the confirmation of appointments by the council is retained, the power vested in the mayor under these provisions represents a tremendous concentration of authority in the hands of a single individual.

The second type of provisions is illustrated in the case of the Cleveland charter. The mayor is vested with the power to appoint directors of all the administrative departments, and the officers and members of commissions not included within the regular departments. The directors of the departments appoint the commissioners in charge of each of the divisions in the department; and the commissioners in turn, with the approval of the director, appoint all officers and employees in the division. Most of these positions belong to the classified service and the appointing authority is restricted to the eligible list presented by the civil service commission to the city, but the appointing power of the mayor is unrestricted inasmuch as it lies wholly in the unclassified service.<sup>13</sup> The provisions proposed for the city of Toledo, Ohio, by the charter commission of 1914, were very similar to these in the Cleveland case, but excepted all heads of divisions and all ordinary unskilled labor from the classified service, thus increasing the authority of the directors and division heads respectively. These provisions undoubtedly recognize a tendency

<sup>11</sup> Cf. Scranton, Pa., *Digest of Laws and Ordinances*, p. 23; Seattle, Charter, Art. 5, Sec. 4.

<sup>12</sup> Sec. 10. Note also the charter of San Francisco, Sec. 4; The Municipal League program, Art. 4, Sec. 1.

<sup>13</sup> Charter, Secs. 71, 77, 80, 83, 129, 131, 134. It will be observed that the directors of departments have some discretion in appointments as provided for in Sec. 131 (1), (c) and (f), relating respectively to the selection of advisory boards and certain heads of divisions.

which is present under the first set of provisions, viz., for the mayor to entrust the selection of deputies and subordinates to his department heads, or to rely upon them for recommendations as to who should be appointed.

A third sort of provision found in charters and of importance in determining the appointive power of the mayor is that which relates to the selection from minor officers and employees by the merit system. These provisions are usually found in cities that have charters embodying the second sort, and in almost all modern charters whether drawn by states or cities the merit principle finds recognition. The customary practice is to divide the entire civil service into two groups, one the unclassified list and the other the classified list of officers. In the unclassified list are placed the elective, departmental, and other important places, the list being generally specified in the charter itself.<sup>14</sup> The effect of the application of the merit principle is to restrict the exercise of the appointive power within the bounds of proved fitness for the place. The appointing authority is assisted in the intelligent performance of its duty, a duty that is by no means a simple undertaking, but inasmuch as the assistance must be accepted the restriction is real and to some degree effective. It should be observed, however, that these restrictions are often only partially able to exert their influence and that sometimes the restraint exerted is more apparent than real. This is partic-

<sup>14</sup> The following list from the recently adopted St. Louis charter illustrates the offices in the unclassified service:

“(a) all officers elected by the people;

“(b) all heads of departments, offices and divisions;

“(c) the members of all boards appointed by the mayor, or serving without compensation, however appointed;

“(d) one secretary, deputy or assistant and one stenographer for each officer or board in the unclassified service, who are or may be provided by ordinance with such subordinates;

“(e) all officers of the board of aldermen;

“(f) surgeons, physicians or other experts serving in a consulting or other capacity without compensation.

“(g) In addition to the above, on unanimous vote of the board (of Public Efficiency), there may be included in the unclassified service such other offices or positions requiring exceptional scientific, mechanical, professional or educational qualifications as may be ordered by rule of the Board.”

See Charter, Art. 18, Sec. 3.



ularly true where the power of appointing and removing the members of the civil service commission is vested in the mayor.<sup>15</sup> The temptation which political pressure brings to the municipal executive proves beyond the power of many to resist. This fact accounts for the tendency to except the civil service commissioners from the removal power of the mayor, even tho appointed by him, or to make their removal possible only upon adequate cause being established. In New York State the municipal commissions are subject to a supervisory authority vested in the state civil service board, an authority which in 1914-1915 was exercised by an investigation of the New York City commission.<sup>16</sup> The conviction is deepening that the permanent administrative service of the cities should be placed beyond the reach of the local appointing authorities. Various suggestions have been advanced to achieve this end by relieving the mayor and his staff of the power to use the patronage as a reward for party service. Among these are the appointment of the local civil service board by the governor and the selection of local commissioners by the merit system under the auspices of the state commission.<sup>17</sup>

Opinion is divided as to the advisability of putting practically the whole of the administrative service, including department heads, into the classified service. So eminent a student of municipal government as William Dudley Foulke, for five years president of the National Municipal League, affirms that civil

<sup>15</sup> As for example, in Chicago under Mayor Thompson. Cf. *The New Republic*, Vol. VII, pp. 36-38, for article on "The Fall of a Mayor." The civil service commission was made the pliant tool in the demoralization of the municipal service, and conservative friends of good administration have been led to protest against the obvious and flagrant attempts to intrench the adherents of a political machine in the municipal civil service. Within four months Mr. Thompson had made 9,163 temporary appointments "the spoils men's method" of evading civil service restraint.

<sup>16</sup> The investigation and its results is described fully in the *National Municipal Review*, Vol. V, No. 1 (January, 1916), pp. 47-55. Although the investigation assumed the nature of a persecution, and failed to establish a serious case against the New York City commission, its work will probably aid in correcting practices which have been tolerated, both in city and state. The Mitchel administration was vitally interested in the investigation inasmuch as in New York City the mayor may appoint and remove civil service commissioners at pleasure.

<sup>17</sup> In Massachusetts the state commission exercises a direct control over the work of the city commissions.

service "rules could be well applied" to department heads.<sup>18</sup> On the other hand there is the view that "there is no objection to the higher positions being filled with party men."<sup>19</sup> The point of view of an experienced and responsible administrator is well expressed by Mayor Mitchel of New York, who selected his staff of assistants solely on the basis of training and fitness, from within party lines if possible, from without them if necessary.<sup>20</sup> Under the conditions which obtain in the political life of most American cities at the present time the introduction of the non-

<sup>18</sup> Presidential address before the National Municipal League in 1915. Published in the *National Municipal Review*, Vol. V, No. 1 (January, 1916), p. 15.

<sup>19</sup> Quoted from an address by Augustus Lynch Mason before the Economic Club of Indianapolis, delivered January 25, 1915. Published in pamphlet form. The quotation is taken from p. 18.

<sup>20</sup> Mr. Mitchel said: "The theory of selection upon which the fusion [which nominated and elected him as mayor] . . . was predicated, was that appointments to the headship of . . . departments should be based solely upon qualification, training and fitness to discharge the duties of the office, and without regard to political service rendered. . . There had been a number of political parties contributory to the fusion movement. Each of these parties felt that, subject, of course, to the prime requirement of competency and efficiency, it ought to receive recognition in these appointments. My point of view toward the selection of the heads of departments was that, first of all, I had to find men qualified; that if qualified and trained men could be found within the lines of these political parties contributory to fusion, I should be glad to find them, to select them, and to appoint them. But if I could not find them within the lines of those parties within a reasonable length of time, or if I could find better qualified men outside the organizations of these parties, I felt that it was my duty to select those men."

Mr. Mitchel selected some organization men for positions on his staff; a great many were not party men. The position in which he was placed would, however, have proved the undoing of a man less resolute. He thus described the temptation to which he was subjected: "The pressure, the perfectly natural pressure, that comes from each one of the parties is great. You are urged that this particular applicant recommended by the party is quite as good as any other you may find elsewhere. He may, in fact, have some excellent qualifications. Perhaps the balance is almost even between him and the other man; and yet that other man may have some particular qualification or some particular experience, that recommends him more strongly; and when the selection is made, then the party that recommended the other feels aggrieved, because it says, 'After all, he was pretty nearly as good.'" See *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, No. 3 (April, 1915), pp. 2, 3.

partisan expert would be inopportune. Municipal electorates will have to be brought to the point of supporting such a policy thru gradual education and as the result of experiments made in the more progressive and enlightened centers. The responsible executive, appointing his principal assistants only from the best qualified of his party associates is the intermediate stage which municipal administration has now generally reached in its evolution and it is a step far in advance of conditions a half century ago. It constitutes the justification of continued endeavor toward the goal set by Mr. Foulke. When that goal is reached the appointive power of the mayor will be less significant than it now is, but until then it will continue to be of the utmost importance, despite the restrictions in the filling of subordinate positions.

Perhaps the most promising development of recent years in the direction of restricting the appointing of the mayor as regards department heads and other major officials is the use to which the Massachusetts State Civil Service Commission has been put in the effort to secure expert administrative chiefs for Boston. Upon the commission is imposed the duty of passing upon the appointments made by the mayor. The charter provides that the latter shall appoint all heads of departments and members of municipal boards. The confirmation of the council is not required. It is specified, however, that the appointees shall be recognized experts in the work that shall devolve upon them, or that they shall be specially fitted for the performance of their duties by reason of their education, training, or experience. To secure this expert service the mayor is required to present certificates giving in writing his opinion of the appointee. These certificates are in one or two forms as follows:

"I appoint (name of appointee) to the position (name of office) and I certify that in my opinion he is a person specially fitted by education, training or experience to perform the duties of the said office and that I make the appointment solely in the interest of the city." The certificate is to be signed by the mayor and filed with the city clerk.<sup>21</sup> The latter forwards a certified

<sup>21</sup> The mayor has the option of which certificate he will use. The inclusion of the second form as one which might be used indicates some divergence of opinion among the framers of the charter as to whether the head of a department or the member of a board need always be a "recognized



copy of the certificate to the state civil service commission. The commission inquires into the appointee's qualifications, and if satisfied as to the character of the appointee's qualifications it becomes its duty to file a certificate similar to that of the mayor's in the office of the city clerk. When this is done the appointment becomes operative, subject to the usual provisions governing the induction of appointees into office. If, however, the commission is not satisfied as to the qualifications of the mayor's appointee, it may void the appointment by failing to file a certificate within thirty days of the time when it received notification from the city clerk. The operation of the foregoing provision in Boston has commanded the attention of students of municipal organization thruout the country. The city has been spared many poor appointments thru the failure of the commission to approve the certificates submitted by the mayor, and doubtless executives have been deterred from submitting some names for which there was obviously no hope of approval. The plan has been suggested for adoption in Cincinnati and in a somewhat modified form in Indianapolis. Doubtless it is a step in the direction of state control and for that reason fails to attract the support of ardent believers in municipal home rule. Experience in Boston leads one to surmise that the mayors of that municipality take some long chances, and in an effort to pay off political debts submit names for which they must realize there is little hope of approval.<sup>22</sup>

A choice between the three principal methods of exercising the expert." As a matter of experience the forms have meant but little, apparently, to the mayors who have filled them in and signed their names. In his book, *The Government of American Cities*, p. 231, Professor W. B. Munro points out that from the very first the mayor of Boston has attempted to appoint those who "under the broadest interpretation of the terms" could not be considered qualified. The commission which investigates the appointments has failed to approve a very large percentage of them. In explaining the reasons which led to the adoption of the plan Mr. Munro says: "The Boston plan rests upon the conviction that aldermanic confirmation as a check upon the mayor is an open farce, if nothing worse; that the average mayor cannot be trusted to appoint competent heads of departments if he has sole responsibility in the matter; and that the system of competitive civil-service examinations does not procure, for department headships, men of adequate administrative capacity or political vision."

<sup>22</sup> The reports of the Boston Finance Commission contain many illustrations of this practice. Cf. especially Vol. V, pp. 18-20; Vol. IX, pp. 17-20.



appointive power of the mayor should be made with due regard to conditions obtaining in respective cities. On the whole the experience of Boston does not appear to have secured a higher grade of public officials than have been secured in cities like Cleveland and New York where the appointing power of the mayor is comparatively free from all except the more formal restrictions. The record of the Boston plan indicates that it will serve to check the improper use of the appointing power in the hands of a man who is willing to prostitute his office by placing in positions of authority and responsibility men who are incapable, untrained, and unscrupulous. It will not assure the appointment of highly desirable chiefs. It fixes a minimum standard below which appointees must not go, but it does little to raise that minimum,—the power of the commission is inadequate for that purpose. The maximum qualifications in public servants cannot be established by any cut and dried charter device. It is the product of citizen interest, activity, and support. Cleveland has enjoyed a long period of honest and relatively efficient government and will not tolerate anything else. Political conditions in Boston are less favorable than in many other cities. The persons who could be expected to back such efforts quite often live in adjoining cities and do not participate in the municipal politics of Boston, and among those who reside in the city there is wanting the degree of coöperation between different social groups that is necessary to success. The Boston plan is not one that commends itself to those cities willing to undertake their own redemption without the interference of state authorities. It does not contribute to the establishment of that clear and definite responsibility in administration which is so desirable, especially when the appointive authority of the city is elected by one great party, while the state civil service board may be appointed by a governor elected by the opposite party. Of the three methods, that of confirmation by the council seems to be the least desirable, tho still the most prevalent, especially in cities operating under general state laws and in the smaller urban communities.

There are further restrictions upon the appointive power which do not at first appear. Commonly the terms of the members of boards and commissions and sometimes of officers created by law or charter do not all expire with an outgoing administra-

tion. It is thus possible for the dead hand of one administration to be powerfully felt in a succeeding one.<sup>23</sup> An interesting restraint is found in the Los Angeles charter which permits the recall of appointive officers. In the qualifications which are fixed for the incumbents of many offices there are also restrictions which operate with greater or less degree of effectiveness. Moreover there can be little doubt that the exercise of the appointing power is more and more being subjected to close and searching scrutiny by organized groups of the electorate and public spirited agencies. Public opinion as well as political and partisan considerations also tend to narrow down the field of the appointing power.

### *Power of Removal*

In close connection with the power of appointment is that of removal. In fact the latter, with certain limitations, almost supplements the power of appointment and gives to the latter much of its significance. It makes it possible for the mayor to enforce the responsibility to him which the power of appointment is presumed to create. In general the removal power is exercised in one of three ways: (1) at will, (2) for cause only, (3) with the consent of the council, or other confirming authority.

Removal of incumbents from office at the discretion of the mayor is the goal toward which the development of this power has been tending. Thus Baltimore permits the removal of an appointee in this manner during the first six months of his service, but restricts the exercise of the removal power following that date. Superior, Wis., authorizes the mayor to remove watchmen, policemen, and firemen at will. The city of New York vests in the mayor complete power to remove heads of departments at any time.<sup>24</sup> In Toledo, Ohio, the removal power is practically discretionary with regard to all public officers except members of the civil service commission or of the commission of

<sup>23</sup> Thus in the charter adopted by Toledo in 1915 the terms of some of the officers appointed by the mayor are five years. For example, the members of the Commission of Publicity and Efficiency (Sec. 181), and of the City Plan Commission (Sec. 189).

<sup>24</sup> In New York City the members of the Board of Education and of the Aqueduct Commission and trustees of the College of the City of New York and of the Bellevue hospital and the judicial officers of the city are excepted from the removal power of the mayor.

publicity and efficiency, but laconically adds: "A removal by the mayor shall be final." The Boston charter confers this power of complete removal upon the mayor only with regard to the employees of his office, who are excepted from the civil service rules and denied all protection.<sup>25</sup>

Removal by the mayor for cause only is the practice most generally recognized in charters of late years. The mayor's authority is variously affected by these efforts to avoid giving him arbitrary power. In Boston the method of removal for department heads and board members, except in the case of election commissioners, school committeemen, etc., is for the mayor to file a written statement of the removal setting forth in detail "the specific reasons" which prompted him to the act. A copy of the statement is delivered to the person removed from office. If the latter so desires he may file with the clerk a written statement in reply. This reply does not, however, have any other value than that of bringing the mayor's action into publicity. It does not affect the action taken by him unless he himself so determines. There is little difference between this situation and that which exists in Toledo. In the Boston case the filing of the reasons is mandatory; in Toledo it is necessary only upon the demand of the party removed. In both cases the action of the mayor is final. The Boston type of removal is the most powerful now employed under the restriction that causes may be assigned. Very inadequate reasons may be given, so that the power is after all restrained principally by the degree of publicity which is likely to follow its exercise.<sup>26</sup>

<sup>25</sup> Amended City Charter, Sec. 15. The paragraph is unique among charter provisions and reads:

"The civil service law shall not apply to the appointment of the mayor's secretaries, nor of the stenographers, clerks, telephone operators and messengers connected with his office, and the mayor may remove such appointees without a hearing and without making a statement of the cause for their removal." Cf. San Francisco, Charter, Art. 4, Chap. I, Sec. 1.

<sup>26</sup> Amended City Charter, Sec. 14. One mayor of Boston has used the power of removal rather vigorously. In March, 1914, Mayor Curley ousted sixty-three employees from the department of public works, justifying the act by announcing the saving of approximately \$76,000 per annum to the city, that sum representing the total of their salaries. In 1914 also the entire board of appeals was removed. The only other case under the present charter was the removal of the fire commissioner in 1912. The same party has, however, been in control since the amended charter was adopted.

The recently adopted St. Louis charter indicates a slightly more conservative development. The mayor may remove all non-elective officers and all employees; "but shall not remove from any office, department or division head appointed by him, except for cause." Another provision in the charter follows the Toledo plan, and enables the employees of the city other than those excepted above to require a statement of the reasons for discharge to be filed with the efficiency board of the municipality. The charter does not specify the nature of the causes or the manner of their presentation, and in its practical operation there appears to be but a shade of difference between the St. Louis provisions and those obtaining in Boston. The St. Louis provisions, indeed, expressly authorize the appointing officer to "suspend or discharge or reduce in rank or compensation any officer or employee under him, with or without cause," cases specified in the charter alone excepted.<sup>27</sup> These instances, however, represent a very weak survival of the requirement that removals may be for cause only.

Earlier practice is indicated by the general municipal law of Illinois and the general charter statute for Indiana cities. In these states any officer appointed by the mayor may be removed by him, but the reasons for the action must be reported to the city council and in Indiana to the person removed.<sup>28</sup> The Illinois statute empowers the mayor to act whenever the interests of the city demand it, but protect an officer against removal from office a second time for the same offense. The reasons must be filed with the council within ten days. If this is not done or if the council by a two-thirds vote disapproves of the removal, the officer is restored to his position. It is easy to see, however, that many cases might arise in which the opposition of the mayor's action could not command the necessary two-thirds majority and the action of the executive would stand with or without satisfactory reasons. Of all the requirements that provide for removal for cause only those similar to the provisions of the Baltimore charter guarantee that the cause will have something of reality

<sup>27</sup> In classified service, removals, etc., on account of religious or political opinions or affiliations are prohibited. Art. 18, Sec. 12.

<sup>28</sup> General Municipal Laws of Illinois, Art. 2, Sec. 27. It is interesting to observe that in the Chicago charter convention of 1904 this feature of the removal power of the mayor was retained intact.



in them. After the appointee has held office for six months of his term he may be removed only for cause and after a hearing upon the case.

The third method of exercising the removal power is with the consent of the council or other confirming power. The situation in Los Angeles is typical. There the charter provides that with regard to appointed officers the appointing power shall have the power of removal in all cases, but "where confirmation is required, the assent of the confirming body shall be requisite for removal." The action of the council or other assenting body is to be taken by an open ballot or call of the roll and the respective votes made a matter of record. The number of cities which require procedure of this kind in effecting removals is comparatively small and is diminishing. None of the later charters proposed or adopted include this method, although it was quite the usual method when the power of removal was first being vested in the mayor.<sup>29</sup>

There are other methods of removing officers extant, but the number of cities in which they apply are limited. One of the methods denies to the mayor the power to remove but enables him to prosecute charges before the council or other competent authority.<sup>30</sup> In some cities the subordinate officers may be removed from office by the recall and are ineligible for reappointment if recalled. In still others the council alone may remove, but in these cases it still retains the power of appointment.<sup>31</sup> The last method to be mentioned is that of vesting the power to

<sup>29</sup> Other cities which still retain this method are Waltham, Mass., Charter, Sec. 30; Detroit, Mich., Charter, Sec. 162, but this requires a majority vote only; Worcester, Mass., and Newton, Mass., kept this method until 1903 and 1910 respectively; *cf.* also charters of Providence, R. I., Sec. 9, Clause 9; Pawtucket, R. I., Sec. 7, Clause 7, requiring two-thirds and three-fifths votes respectively to remove; and for Butte, Mont., the Political Code of Montana, Sec. 4781.

<sup>30</sup> See Kentucky General Act for the Government of Second-class Cities, Sec. 184. The mayor, however, may dismiss officers who are found to have been interested in contracts with the city without the consent of the aldermen. The ordinary method of reaching this practice of municipal officers being interested in public contracts is to declare that such contracts are void.

<sup>31</sup> Milwaukee, Charter, Chap. XIX, Sec. 7; Minneapolis, Charter, Chap. II, Sec. 1; cities of the fourth class in the state of Michigan, General Act of Incorporation, Sec. 103.

remove in the mayor, but authorizing an appeal from his action to the local courts, the decision of the latter to be final.<sup>32</sup> This list may not be exhaustive, but it is at least indicative of the variety of the processes that still obtain in the exercise of the power of removal. The centralization of administrative authority in the mayoral office is by no means so complete as the survey of the more important cities would lead one to think. In scanning the numerous methods by which the removal power is called into play one sees the weak mayoralty of a century ago side by side with the most highly developed and powerful executive of the twentieth century.

As has been noted, removal power is intended to enable a mayor to bring the rest of his administration into harmony with his own policy, or to curb maladministration. But many times it proves difficult to bring the power into play. The mayor often hesitates to offend powerful groups or interests that may be interested in the misconduct of an officer. The existence of the power of removal, however, enables the public to fasten responsibility upon the mayor and in that respect its development has been eminently justified. There are of course instances of its gross abuse. It was most notoriously employed in Terre Haute, Indiana, during the election fraud cases in 1915. The mayor announced that those city employees who pleaded to the indictments for election fraud returned in the federal court would be dismissed from the service. The mayor himself being under indictment at the time and later being found guilty of charges which revealed him as the leader in the fraudulent practices charged, the threat to remove could be interpreted only as an attempt to coerce his fellow defendants into a more vigorous defense. There can be little doubt that the power to remove is one that is frequently employed to bulldoze employees of the city into subservience that is far from the kind of harmony which the power was intended to promote. Despite this situation one cannot seriously question that the power has produced the results which were expected of it and has been a potent element in mayor government. The cause of good government appears to be best served where the power of removal is complete or nearly so, at least with regard to heads of departments and other important

<sup>32</sup> Cf. Norfolk, Va., Charter, Sec. 11. The mayor must specify his reasons to the party removed.

functionaries not included within the permanent civil service of the municipality. The best guarantee for its proper exercise is the publicity which must inevitably attend its application to important offices.

### *Power of Suspension*

Closely allied with the power of removal is that of suspension. Frequently it is not mentioned in the municipal charters,<sup>33</sup> but often it is conferred in connection with the power to appoint and the power to remove.<sup>34</sup> In Newport, Rhode Island, the mayor may suspend any city official. If the action is sustained by the aldermen, the officer is removed from office.<sup>35</sup> In Superior, Wisconsin, the mayor may suspend and reinstate any employees in the police and fire departments, and may suspend other officials against whom charges have been preferred until the latter have been disposed of. In some cities — those of Indiana for example — the reason for the suspension must be sent to the city council. The party suspended must be notified of the action, but the decision of the mayor seems to be final. In all of the foregoing cases the power of suspension is expressly conferred but its use and application to individual cases lie within executive discretion. In San Francisco the exercise of this power becomes a duty and the authority conferred upon the mayor is couched in mandatory terms.<sup>36</sup> In general the power to suspend depends upon its being explicitly bestowed, but in case the appointive power of the mayor is complete and exclusive and the terms of appointive officials are not fixed, as in New York or Cleveland, the power to suspend becomes a part of the measure of executive discretion vested in the mayor.<sup>37</sup>

There has been a disposition in a number of cities to extend

<sup>33</sup> For example the charters of Boston and Baltimore.

<sup>34</sup> *Cf.* the charter of Indianapolis, Sec. 80; of Superior, Wis., Sec. 22.

<sup>35</sup> *Vide* description of the Newport plan by E. E. Chadwick in the *Proceedings of the Providence Conference on Good City Government*, p. 172 (1907).

<sup>36</sup> Charter, Art. 4, Chap. I, Sec. 2. The language is as follows: "When any official defalcation or wilful neglect of duty or official misconduct shall come to his (the mayor's) knowledge, he shall suspend the delinquent officer or person from office pending an official investigation."

<sup>37</sup> This feature of the power of suspension is discussed from the standpoint of administrative law in Bayles' *The Office of Mayor in the United States*, pp. 55, 56.

the mayor's power of suspension to elective officers as well as to subordinate appointive officials. It was retained in the new charter of St. Louis and is found in the charter of San Francisco. The former charter of St. Louis permitted the mayor to suspend elective officers for cause. He must then file charges with the register and convene the council for the purpose of stating his ground of action. The approval of the council removed the incumbent from his position. Failure to approve operated to reinstate the one suspended. The provisions in the new charter are very similar. A three-fourths vote of the board of aldermen is necessary to sustain the charges and fix the time and the place of the hearing. A rather formal trial ensues. The members of the board must record their vote by the yeas and nays and their action is certified to the mayor. If the suspension is not sustained the immediate reinstatement of the defendant is mandatory. The provisions in the case of San Francisco are practically identical with the foregoing. In both cities the mayor enjoys the power of appointing some person to perform the duties of the office vacated by the suspension.

In general the power of suspension with regard to an elective office is vested either in some state authority or it is vested in the council.<sup>38</sup> When vested in the mayor it signifies a development of the doctrine of centralization in administrative power and responsibility that is cumbersome and on the whole undesirable. It has none of the advantages that are to be gained by the adoption of the short ballot and the concurrent recognition of the mayor's power of appointment and removal. Nevertheless it may be accepted as an evidence of a tendency to exalt the position of the mayoralty in administration, even at the expense of the elective principle.

The power of suspension can hardly be viewed except in relation to the power of removal. In the case of appointive officers in the administration it is often used but chiefly as a preliminary to the more vigorous discipline of complete removal, not with a view of chastening the individual affected. Occasionally a reinstatement occurs but it is not the rule.

The powers of appointment, removal, and suspension have been the center of prolonged controversy, and the discussion over them

<sup>38</sup> See the charter of the city of Los Angeles, Art. 2, Sec. 9.



is worthy of brief consideration. The municipal charter of the National Municipal League placed in the hands of the mayor the power of appointing practically all subordinates.<sup>39</sup> The wisdom of this feature of the charter was questioned by some of the conference which adopted it, and has been questioned since that time on the ground that this power over department heads is sufficient. It also has been urged that any further extension of his control has a demoralizing effect on the municipal service, while the moral effect of responsibility on the part of subordinates to department heads "is great and should not be sacrificed except for very cogent reasons." In the address by former Governor W. E. Russell of Massachusetts, he expressed the opinion that the power of the mayor to appoint should be limited, but his power to remove, complete.<sup>40</sup> Municipal practice has tended to invest the mayor with complete authority over department chiefs and to create a subordinate service that is chosen under the merit system and responsible to department heads.

### *Power of Investigation*

One of the most universally recognized powers which the mayor possesses is that of investigating all branches of the administration and the conduct of departmental and subordinate officials. Upon no other feature is there such unanimity in municipal charters, unless it is upon the provision that he shall be the chief executive officer of the city. By far the most generally employed phraseology for conferring this power is that which declares that the mayor "shall have the power at any time to examine any books or records of any employee of the city." These words or their equivalent are found in scores of municipal charters and in many general charter statutes.<sup>41</sup> Slight variations

<sup>39</sup> Municipal Corporations Act, Art. 4, Sec. 1. The provisions were that the mayor should appoint all heads of departments except the controller; also subject to civil service regulations the subordinate administrative officers and employees except that laborers were to be appointed and removed by the heads of departments. In New York City the direct and indirect appointing power of the mayor affects approximately seventy thousand persons, drawing salaries totaling more than sixty-five and one-half millions of dollars. Cf. *Short Ballot Bulletin*, Vol. III, No. 7 (February, 1916), p. 7.

<sup>40</sup> Quoted in Reinsch, *Readings in State Government*, pp. 8, 9.

<sup>41</sup> Cf. the General Law relating to the Incorporation of Cities of the Fourth Class in Michigan, Sec. 50; The Cities and Villages Act of Illinois,

occur: the word "inspect" is used in place of the word "examine;" the words "papers" and "manner of doing business" are added now and then; the phrase "without notice" appears occasionally; now and then the employment of experts for the investigation is authorized; and in some cases "departments" are specified as coming within the power of investigation.<sup>42</sup> Indeed these provisions have been common in charters since the emergence of the mayoralty into more than merely nominal leadership. Taken by themselves, however, they have provided for little more than nominal powers of investigation and to assume that the authority is or has been diligently or intelligently exercised appears to be very largely unwarranted. Occasionally, as in the case of Josiah Quincy, a mayor has taken this power seriously, but its vigorous exercise is not popular among municipal employees; it demands a large measure of tact on the part of the executive; it lays heavy tribute upon the mayor's time and energy; and finally it presumes a training and a knowledge of what constitutes "legal and proper" methods of doing business, keeping records and accounts that many mayors do not have. In this matter of inspection, too, local tradition has had no little to do with actual practice, and very frequently the sudden introduction of adequate inspection or examination has been regarded as casting unwarranted suspicion upon the official concerned, or as evidencing an unjustifiable and prying concern on the part of the mayor. Doubtless, too, there have been cases in which mayors did not care to employ this authority, vaguely realizing that it might not cast credit upon the record of their own administration.

It should be observed, on the other hand, that the mayor has actually enjoyed no such sweep of authority as the general language employed would seem to indicate. To remedy this situation and to render the mayor capable of conducting investigations efficiently the National Municipal League program advised that the mayor be empowered to compel the attendance and testimony of witnesses in connection with his investigations. Some

Art. 2, Sec. 31; Baltimore, Charter, Sec. 21; Tacoma, Charter, Art. 4, Sec. 51; Rochester, Charter, Sec. 49.

<sup>42</sup> Baltimore specifies "departments, sub-departments, municipal board, officer, assistant, clerk, subordinate or employee." Sec. 21. The Illinois act specified any "agent" of the city.

of the more recent charters recognize this suggestion. The charter of Cleveland, for example, provides that "the mayor may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person or persons appointed by the mayor to examine the affairs of any department or the conduct of any officer or employee, shall have the same power to compel the attendance of witnesses and the production of witnesses' papers and other evidence and to cause witnesses to be punished for contempt, as is conferred upon the council or a committee thereof by this charter." Substantially the same provisions are found in the Toledo and St. Louis charters. There is also created in the case of Toledo, a commission of publicity and efficiency whose functions are: (1) to investigate any and all departments and offices; (2) to make semi-annual reports of its conclusions to the mayor and to other municipal authorities; (3) to recommend improved methods to the council; (4) to publish or to furnish to any person at its discretion any reports, recommendations, or information it may have concerning affairs; (5) to investigate and publish information concerning the improvement and development of municipal administration elsewhere; (6) to publish all municipal records and reports; and (7) to collect information for and to advise with all offices and departments. This commission not only furnishes the mayor with the means of conducting an investigation, but maintains such an investigation constantly and by the publicity secured stimulates his constant interest and activity along the same lines. A somewhat similar provision is found in Cleveland in the bureau of information and efficiency, but its powers are less apparent.

Two very interesting developments in the direction of vitalizing the mayor's power of investigation have appeared in New York and Boston respectively. In New York the mayor is made responsible for the administration, an obligation that involves the oversight of some twenty-nine departments and nearly seventy thousand employees. The interests cared for by these departments are vast and important and involve an annual expenditure running up into hundreds of millions. Obviously the mayor needs some efficient agency for exerting his power of investigation. "The Mayor's Eye" has been created for this

purpose, a commissioner of accounts employing almost one hundred skilled persons who "day in and day out" furnish the chief executive with information that enables him to keep in touch with all branches of the administration. It has proven a most effective instrument for aiding the mayor in his efforts to secure good government.<sup>43</sup>

The Boston charter creates a finance committee whose duty it is "from time to time to investigate any and all matters relating to appropriations, loans, expenditures, accounts, and methods of administration affecting the city of Boston or the county of Suffolk, or any department thereof, that may appear to the commission to need investigation, and to report . . . to the mayor, the city council, the governor or the general court." An annual report to the state legislature is required. It is also provided that "whenever any payroll, bill or other claim against the city is presented to the mayor . . . he shall, if the same seems to him to be of doubtful validity, excessive in amount, or otherwise contrary to the city's interest, refer it to the finance commission, which shall immediately investigate the facts and report thereon . . ." The commission is made independent of voluntary appropriations by the municipal council and is authorized to incur such expenses "as it may deem necessary" and the city is made liable for the payment of these expenses to an amount not exceeding twenty-five thousand dollars upon requisition by the commission. The city is obliged to make an annual appropriation of twenty-five thousand dollars for investigations, besides the salary of the chairman of the commission. The commission is clothed with authority adequate to enable it to do its work effectively. It will be observed that the Boston plan provides the mayor with an effective agent for carrying on such investigations as he may care to inaugurate; it further makes sure that investigation will proceed whether the mayor initiates it or not. These two features are highly desirable and will doubtless find place in many future charters. But the finance commission is appointed by the governor and is a state as well as a municipal agency. It is hardly to be anticipated that municipal charter commissions will incorporate these latter provisions into the charter drafts which they submit. The Toledo

<sup>43</sup> See pamphlet, *The Mayor's Eye*, pp. 3-5.



plan appears much more likely to commend itself, strengthened, perhaps, by the acceptable features which the Boston charter offers.

The mayor's power of investigation is frequently enlarged by the council thru ordinances empowering him to act along specific lines. One has but to turn the pages of the numerous volumes of compiled ordinances which are accumulating so rapidly today to discover that the council is defining with great detail the inspectional duties of the mayor. Every new regulatory ordinance provides for records to be kept, conditions of one or many sorts to be maintained in stores, shops, industrial establishments, etc., and the mayor's office is charged with the investigation of such records and conditions. This tendency is especially marked in smaller cities where the departmental establishment is not highly organized, or where the council still remains a very powerful organ of government;<sup>44</sup> but it is far from absent in the more important municipalities.<sup>45</sup>

### *Reports and Conferences*

An important element of the mayor's administrative authority is his powers of calling meetings of department heads, members of boards, commissions, and bureaus, and the allied power of calling for reports from them either at regular intervals or at his pleasure. These powers are frequently conferred in express terms in the municipal charters, while in cases in which appointees hold office at the pleasure of the mayor the latter has ample authority to make such demands. The phraseology in which these powers are bestowed varies greatly. The Cleveland charter provides for annual reports from the directors of departments to the mayor and for the furnishing to the mayor "at any time" such information as he may desire. The Baltimore charter employs somewhat happier phraseology. An annual confer-

<sup>44</sup> See for example, the *Principal Ordinances of Superior, Wis.*, pp. 187, 188, 197.

<sup>45</sup> The Revised Code of St. Louis furnishes many examples. In larger as well as smaller cities mayors make personal tours of inspection from time to time. It may be observed that the increasing accessibility of municipal ordinances opens up a wide field for study in municipal legislation. In some of the more important branches of it such as franchise legislation the trails through the wilderness have been blazed, but the larger part of this field has received little attention beyond spasmodic attempts at local codification.

ence is mandatory, but the mayor may summon heads of departments "to a conference on municipal matters . . . oftener, if he thinks the public interests will be promoted thereby." Reports either oral or written, as the mayor may prefer, are to be made once every month. The St. Louis charter enables the mayor to require any department, board, or officer to "make reports to him," besides requiring annual reports and the furnishing of information "at any time." An example of the exercise of the mayor's power of calling for information is given by Mayor Mitchel in a discussion of the office of mayor. Prior to his administration, department heads had been submitting budget estimates to the board of estimate and apportionment. Upon his accession department heads were instructed to submit their estimates to the mayor, enabling the latter to review them and to present to the board of estimate and apportionment an executive budget. The result was that the amount asked for in the budget represented a decrease from the actual appropriations of the year before.<sup>46</sup> In this case the exercise of the mayor's authority secured not only economical estimates of departmental needs, but it made possible the inauguration of a desirable feature in municipal budget making. The mayor system has considerable to learn regarding the value of frequent meetings of heads of departments with the executive, a value which is being demonstrated in cities under commission and manager governed systems. It is equally true that the power to call for information and reports may be made the means of securing more responsible and enlightened administration.

### *On Boards and Commissions*

In some cities the position of the mayor in administration is enhanced by his being made ex officio a member of local boards and commissions, or in case membership is denied him, being privileged to attend and take part in board meetings. In San Francisco, for example, he is a member of the board of library trustees and is privileged to attend the meetings of any other boards and to offer suggestions during their proceedings. Cleveland makes the mayor president of the board of control and of the sinking fund commission; and Cleveland and Toledo make

<sup>46</sup> *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, No. 3 (April, 1915), p. 8.

him president of the board of revision and assessments. In New York City the mayor sits as chairman of the boards and commissions of which he is a member, viz., the board of estimate and apportionment, the sinking fund commission, the banking commission, the armory board, and the board of city record.<sup>47</sup> St. Louis and Rochester, New York, follow the practice of making the mayor a member of the board of estimate and apportionment,<sup>48</sup> and Baltimore places the mayor on the board of estimates. The latter city also makes the mayor a member of the board of charities and corrections, of the art commission, and of the board of review and assessment. Occasionally, as in some Illinois cities which retain their special charters issued before the constitution of 1870 was adopted, the mayor is a member of the board of education.

It should be observed that the policy of making the mayor a member of municipal boards and commissions may easily be carried to the point where it imposes an unnecessary burden upon him. Except in the case of boards whose function it is to unify and direct the work of important branches of administration or to coördinate the efforts of various administrative districts, such as the boroughs of New York City, or to prepare the budget and apportion the distribution of the annual revenue, there seems to be little gained by making the mayor a member of a board that could not be gained by giving him adequate powers of appointment and removal, supervision, and control. The later charters, in so far as any tendency may be said to exist, appear to recognize this fact, and it cannot be said that there is any disposition to extend the practice.

### *Power of Approval*

Perhaps the power which lays the heaviest demand upon the time of the mayor is that of approval. At his discretion literally hundreds of measures and acts that feature the conduct of administration are subject to his approval. A complete enumeration of these would serve no good purpose, but the following

<sup>47</sup> See article by Mayor Mitchel in *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, No. 3 (April, 1915), pp. 4, 7.

<sup>48</sup> Charter, Art. 16, Sec. 1. One of the criticisms made of the St. Louis charter before and after its adoption was that it did not make the mayor powerful enough. Rochester, Charter, Sec. 61.

classification of matters subject to the mayor's approval indicates the range within which cities confer the power of approval:

1. Blanket provisions that the mayor may approve all matters requiring approval for which the charter has failed to provide some other method.

2. The bonds of city officers and bidders and contractors for city work, and of those holding licenses and permits.

3. The settlement of disputes as to jurisdiction between officers or branches of the administration.

4. The institution of suits at law on behalf of the city.

5. The appointments made by the controller and other officers of the administration.

6. The assignment of rooms and offices to the departments, or renting of additional space for administrative purposes.

7. The inauguration or extension of special administrative undertakings such as investigations.

8. The adjustment and settlement of claims against the city.

9. The rules and regulations of municipal departments, boards, and commissions.

10. Multitudinous and varied matters upon which the approval of the mayor is required by city ordinances. Market leases, settlements made by street commissioners, deposits of city funds, the release of mortgages, water rates, and the like.

It is worthy of observation that in more recent charters the amount of this work requiring the approval of the mayor has decreased, at least so far as incorporation of the requirements in the charters themselves is concerned. At the same time the power itself remains practically intact through the larger and more immediate control which the mayor has gained over the administrative service by the elimination of the council as a factor in appointments and the development of a complete power of removal. Exceptions to this tendency may be noted in isolated paragraphs in such charters as those of Cleveland and Toledo. For some of the exceptions there appear to be reasons, especially in the expenditure of public funds. Thus in Toledo, contracts which involve the expenditure of five hundred dollars or more may not be entered into unless approved by the mayor and the head of the department interested.



### *Public Safety*

In the administration of departments which involve the public safety the mayor usually enjoys exceedingly broad powers and the charters freely specify that the position of the mayor is one of supremacy in this particular. In the Cleveland charter, for example, the director of public safety who is the executive head of the police and fire divisions is specifically "under the direction of the mayor." In the San Francisco charter it is provided that the mayor "may use and command the police force." The Los Angeles mayoralty is not as imposing in its authority as that of many other cities, but a charter amendment of 1911 gives the chief of police the supervision and control of the police force "subject only to the orders of the mayor." In cities like Boston, Baltimore, and St. Louis, where the police are under the control of commissioners responsible to state authority, the mayor's powers are limited except in cases of extreme danger. In the smaller fourth class cities of Michigan, and in other cases, the control of the local police is vested in the council.<sup>49</sup> The mayor is frequently clothed with the powers of a sheriff for the purpose of enforcing law and suppressing disorder. It is obvious where the chief of police or the police commissioner hold office at the pleasure of the mayor that the latter's authority is both immediate and effective, even though special provisions are not incorporated in the charter to that end.<sup>50</sup>

The relation of the mayor to the fire department is not by any means uniform thruout the country. In general the practices fall into one of two groups, those in which it is on the same basis as the police department, and those in which there is a distinct differentiation. Cleveland and Seattle furnish very good examples of the first group, tho widely differing from each other. In the former the chief of the division of fire is responsible to the mayor as well as to the director of public safety, and the mayor enjoys the sole power of suspension prior to a hearing

<sup>49</sup> Michigan, laws relating to the incorporation of cities.

<sup>50</sup> The administrations of Mayors Whitlock in Toledo and Gaynor in New York indicate the influence of the mayor in police affairs; even in a city like Chicago with the council occupying a strong position, the mayor is the dominating figure in police administration. The Newburgh Survey, pp. 43, 44, found that the discipline of the police department was largely in the hands of the mayor and the chief of police.

by the civil service commission. The determination of the policies of the department are subject to the will of the mayor thru his effective control over the director of public safety. The mayor of Seattle appoints the chief of the fire department from those who have qualified under the civil service rules. The mayor is charged with the prescription of rules for the department, and may remove the head of the department in accordance with the rules of the civil service code. The Kansas City charter gives to the mayor the appointment of the board of fire and water commissioners. To this board is given the authority to appoint the fire chief and to organize the water supply system as well as the fire fighting system. The board consists of three members, one retiring each year, a fact which materially lessens the effectiveness of the mayor's control, tho he is *ex officio* a member of the board and may, therefore, exert a great personal influence. New York City offers the best example of a city in which the mayor may dominate completely if he so desires; he may remove the head of the department of fire commissioners, at pleasure. An interesting variation is found in Los Angeles where the mayor is by charter made a member *ex officio* and president of the board of fire commissioners, there being two other electors appointed by him subject to the confirmation of the council. The chief engineer or fire chief, is however, appointed by the mayor and expressly subject to being removed by the latter. San Francisco takes great pains to establish a non-partisan board of fire commissioners, by providing that not more than two out of a membership of four may be of the same political party. The mayor, however, may attend the meetings and take part in the board's deliberations, tho without a vote.

The twentieth century has witnessed an increasing tendency to vest in the mayor an authority over public safety commensurate with the responsibility imposed. In states like Illinois, where the elected chief of police or city marshal was found frequently thirty or forty years ago, the almost universal practice today is appointment by the mayor, subject to confirmation by the council. Elsewhere the tendency has been to free the police force from political influence through the adoption of civil service reform measures, but to retain the mayor's control over the head of the department and to give the mayor either independent, supervisory, or concurrent police authority. With re-

spect to the fire department differing tendencies are noticeable and the place of the mayor is certainly not so clear and commanding as is his position in police administration. The disposition indicated in the Cleveland, Toledo, and St. Louis charters, the amendments to the Los Angeles charter in 1911, and the practice that obtains in New York and Boston reveal a decided trend toward concentration of power in the mayoral office; on the other hand the system of board control has been retained in important centers such as Baltimore, Kansas City, and San Francisco, the mayor enjoying at best a somewhat limited authority.<sup>51</sup>

Normally it may be said that the mayor's power in respect to the conduct of departments such as police, fire, and health, is not conspicuously exercised. The major part of the task is committed to the heads of the departments, or directors or boards entrusted with the immediate performance of the work. There are many occasions, however, when the mayor takes an active part in the formation of the plans and policies of these departments and in supplying the energy and vigor with which they are put into execution.<sup>52</sup> The problems connected with the public safety offer large opportunity for gross abuse of the vast powers conferred. Not a few municipal executives have either proven incapable of dealing with these problems, or have permitted the agencies which were intended to protect the public to be converted into instruments for personal or partisan advantage, particularly in the field of police administration. The best that can be said for the mayor's relation to these agencies is that conditions have materially improved, thanks to the efforts of courageous mayors like Jones, Whitlock, Johnson, Gaynor, Mitchel, and others, and the tendency to call into directorship men of vision and training. On the other hand, the mayoralty has undoubtedly failed to furnish the consistent, enlightened, progressive, and efficient leadership that the measure of its authority has in many places demanded of it.

<sup>51</sup> In Minneapolis the mayor has powers concurrent with those exercised by the chief of police.

<sup>52</sup> See for a recent example, the account of Mayor Mitchel's handling of the police problem in the *National Municipal Review*, Vol. V, No. 1 (January, 1916), pp. 30, 31.

*Finance Administration*

The special powers of the mayor in the field of finance administration call for a more individualized consideration than their previous mention in association with other powers indicates. It is in this field that many conspicuous developments in mayoral authority have taken place during the last two decades. In New York and St. Louis the mayor is a member of the board of estimate and apportionment and participates in the work of financial direction and control entrusted to that body. In New York City he is also a member of the sinking fund commission, and in that capacity acts as one of the trustees of all the sinking funds of the city and helps to determine the interest rate on public bond issues. As chairman of the banking commission the mayor shares the responsibility of selecting the depositories of city funds; by creating an executive budget he has assumed an immediate control over the finances of the various municipal departments.<sup>53</sup> In Cleveland and Toledo the mayor prepares the annual budget, in performance of which duty he is obliged to know the conditions obtaining in each department, and to pass upon numerous questions of departmental finance and administration. Within certain limitations the mayor of Boston is not only authorized to prepare the annual budget, but may approve the transfer of appropriations from one fund to another. The importance to Boston of the mayor's financial powers is revealed in the report of the Boston finance commission on the administration of Mayor Fitzgerald in 1912. The mayor is held responsible for extravagance in payrolls, his neglect of the fire department, his tendency to permit increases of appropriations and his approval of propositions which would have wiped out the margin of the city's borrowing power; on the other hand it was noted that he had given more funds to the permanent improvement projects, had checked the increase in the municipal debt, and had bettered the conditions under which contracts were awarded.

In many cities, of course, it is still true that the power of the mayor in finance administration is comparatively limited. The usual power to inspect books and accounts obtains, but the real

<sup>53</sup> Charter, Sec. 204; also *Proceedings of the Academy of Political Science*, etc., Vol. V, No. 3 (April, 1915), p. 9.



authority in finance administration still vests in the council.<sup>54</sup> Yet even in council governed Chicago the mayor appoints the city comptroller; in Kansas City the mayor is one of a committee of three to select the depositories of city funds; in Baltimore the mayor must approve the appointees of the elective controller and is a member of the board of estimates and of the advisory department of review and assessment. In Seattle he is merely a member of the auditing committee. On the whole it appears that his power in financial administration is increasing, a conclusion which is borne out by a survey of the recommendations of practically all the recent charter commissions.

### *Judicial Administration*

The survey of the relation of the mayor to administration would not be complete without some consideration of his position in the work of meting out justice. Formerly the mayor actually possessed considerable judicial authority, traces of which are still abundant.<sup>55</sup> It has been very generally held that this judicial power of the mayor is tending to disappear, and there is much to confirm this opinion. Later municipal charters do not recognize former practice in this particular and generally omit provisions which confer such power upon the executive.<sup>56</sup> In some cases, however, this loss of judicial authority is more apparent than real, for, as in Ohio, the law of the state may do what the charter makers have refused to do. In Ohio the judicial authority of the mayor was actually increased by legislative enactment of April 28, 1913. The mayor was given jurisdiction in counties over such subjects as food adulteration, the protection of children, the enforcement of liquor laws, the laws governing food

<sup>54</sup> For example in Los Angeles, Chicago, and the cities of Illinois, Kansas City, and Seattle.

<sup>55</sup> A rather detailed description of the judicial authority of the mayor will be found in Fairlie, *Municipal Administration*, Chap. XIX, p. 421. Cf. also Bayles' *The Office of Mayor in the United States*, Chap. V. In brief the mayor was a justice of the peace, possessed of some civil and criminal jurisdiction, and held court. In 1895 Mr. Bayles prophesied that his judicial authority would in the future either be ignored or expressly withdrawn (p. 74). Earlier practice is illustrated in the code of N. C., Sec. 2934.

<sup>56</sup> Cf. the charters of St. Louis, Los Angeles, Cleveland, the proposed Cincinnati charter, those of Kansas City, Seattle, and many more.

stuffs, sanitation in dairies, bakeries, and restaurants, and the inspection of weights and measures. In the charters of New York and Baltimore the mayor still is vested with the power of a magistrate and a justice of the peace respectively.<sup>57</sup> The Missouri legislature confers upon the mayor the power of the county courts with respect to specified matters. State law in Minnesota makes the mayor one of a group of three who are authorized to prepare the list of those who are to act as jurors in the municipal courts. The power and duty of holding court regularly still exists in Indiana and some southern states; and to be married by the mayor is still regarded by some seekers after marital bliss as the most desirable method of solemnizing the marriage contract. On the whole, however, the position of the mayor as a judicial officer appears to be declining, owing largely, perhaps, to the development in the cities of other and better agencies for the administration of justice, and to the pressure of other matters upon the mayor's time and strength.

Of much more immediate consequence is the mayor's authority to modify the results of judicial findings through the remission of fines and penalties and the release of persons imprisoned for violation of municipal ordinances. Thus in New York and Illinois the mayor may suspend sentences, release prisoners, remit fines, etc.; the same under restriction is true in Kansas City and many other places.<sup>58</sup> The power is often abused, especially when administrations are under pressure to "enforce sumptuary and liquor laws." Great display is made of the searching out of violators: their prosecution, conviction, and the penalties imposed are heralded to the public. The wrath of the public, aroused to

<sup>57</sup> New York, Charter, Sec. 116; Baltimore, Charter, Sec. 21. The New York provision is laconic: "The Mayor is a magistrate." For Ohio see Act of April 28, 1913.

<sup>58</sup> Cf. New York, Charter, Sec. 707, Par. 3. The mayor enjoys this power by reason of being a magistrate. In Illinois the mayor is expected to report to the council the release of prisoners. See Municipal Laws of Illinois, Art. 2, Sec. 29. The Chicago charter convention of 1904 proposed to continue vesting this authority in the mayor and incorporated a provision to that effect in the instrument it drew up. The mayor of St. Louis is by ordinance given the power to remit fines, penalties, etc. In Kansas City the word "Forfeitures" is added to the list enumerating the penalties to which the mayor's power of remission extends. In Madison, Wis., (Charter, Chap. XII, Sec. 21) the mayor may grant pardons, commutations, etc.

demand such actions, is appeased, and the mayor may safely slip around to the scene of the recent prosecution and enter his order of remission in behalf of those convicted. Notwithstanding the temptation to pervert this power in order to curry political favor there is not sufficient evidence to warrant the claim that its abuse is the normal condition. In the first place the power itself has disappeared from many charters; in the second place the mayors of larger cities seldom interfere personally, preferring to act upon the recommendation of subordinate investigators or boards created to look into applications for clemency; and finally the more liberal interpretation of sumptuary legislation in large cities has tended to limit the occasion for the abuses to the smaller municipalities.

#### *Miscellaneous Powers*

In addition to the foregoing powers of the mayor there is a large group of miscellaneous powers conferred upon him either in state statutes, city charters, or municipal ordinances. These powers include the prescription of parade routes, granting consent to place building material in the street, the inspection of pawn brokers' registers, the designation of local holidays, the authorizing of municipal officers to appear before state legislatures, the sending of indigent sick to hospitals at public expense, the deportation of resident insane, contracting for the care of foundlings, the direction of the employment of the workhouse prisoners, the issuance of death certificates, the abatement of nuisances, the arrest of lawbreakers, and the muzzling of dogs; and the more important powers of revoking licenses, directing a secret service, mediating strikes, and so on. The number of these powers which lie in the discretion of the mayor for their exercise is very great. They relate to every branch of municipal life and service. There are literally a thousand and one duties imposed upon the mayor and calling for the exercise of his authority. One marvels at the detail with which this vast multitude of powers has been set forth; at the folly which believes that good government and efficiency are to be found in the direction of one man power; at the comparative success which many mayors have achieved in the wise exercise of the varied authority thus committed to them.<sup>59</sup>

<sup>59</sup> Cf. almost any of the older municipal charters, the general municipal laws of Missouri, Illinois, or Michigan, the revised codes or compiled ordi-

There are certain matters with respect to which the exercise of mayoral authority is mandatory. Thus in Evansville and Indianapolis the mayor shall, upon three days notice, hear any complaint against a person to whom a license has been issued. In Boston the mayor is obliged to issue licenses for theaters and public halls if the applicants comply with the prescriptions laid down. In Minneapolis, at the request of the board of park commissioners the mayor must appoint park police. The charter of Kansas City requires him to proclaim to the inhabitants any danger from malignant, infectious, or contagious disease that may threaten to become prevalent or the occurrence of public calamity from flood or other disaster. The list might be continued. Indeed in the case of many powers previously cited such as the power of appointment, the power to call meetings of heads of departments, etc., mandatory provisions are to be found in some charters. Thus in Baltimore the mayor is obliged to hold an annual conference of his chief subordinates, and in appointing boards and commissions he must recognize a minority party. In New York City the mayor must exercise his power of appointing officers to fill vacant offices. The usual method for calling these powers into operation is for some interested citizen to sue out a writ of mandamus in a court of competent jurisdiction. Another method employed to bring recalcitrant mayors to time is that of indicting them for failure to fulfil their manifest duty. The former offers a positive means of reaching the incumbent, the latter merely a negative one.

The exercise of the foregoing powers does not by any means exhaust the duties of the mayor. There are numerous clerical or ministerial duties that he must perform. His signature must be affixed to numerous public documents, such as the council journal in those cities in which he presides at council meetings, "council enactments, certificates of election to municipal office, commissions, licenses, warrants, drafts or other evidences of obligation," such as bonds and mortgages, "leases, deeds and all other instruments for the conveyance of real estate to which the corporation is a party."<sup>60</sup> He represents the municipality in

nances of any of the following cities: St. Louis, Kansas City, Minneapolis, Indianapolis, Evansville, Ind., and the statutes relating to Boston.

<sup>60</sup> Numerous citations might be given to indicate the extent to which the mayor's signature is required. Mr. Bayles discusses its importance espe-



projects for the annexation of contiguous territory, especially suburban cities, and in the settlement of controversies between the city on one hand and private individuals or corporations or public service corporations on the other. He receives and approves claims not chargeable to any department. In some places he must give his entire time to the work of his office, in others but part time is expected. His correspondence is enormous in the metropolitan centers, and the demands upon his time, energies, and wisdom due to the personal calls and solicitations of citizens is exhausting.<sup>61</sup> His social duties as chief executive threaten to become oppressive. He is expected to attend local meetings of one kind or another and to support movements and enterprises of a public character and he must represent the city in associations of municipal officials and in its dealings with the state and nation.

#### *General Estimate*

It is difficult to say how far the mayor is actually held responsible for the character and efficiency of his administration. Many things promote confusion of responsibility. The lines of authority between him and his subordinates vary considerably in their directness and their distinctness. The effectiveness of his control depends as largely upon his political leadership as upon his legal authority. In many cases it is sadly true that legislative, councilmanic, or machine or boss interference cut roughly across the mayor's authority, and materially lessen the degree to which he is actually responsible for the administration. It is true, nevertheless, even in cities in which the council is as strong as it is in Chicago, or in which the legislature interferes as actively as it does in New York, or in which the rule of the boss is as well established as it is in Philadelphia or Cincinnati, that the electorate

cially as affecting the validity of these documents. He points out that there is a broad distinction between the mayor's signature and his approval; also that in the case of ordinances, the omission of the signature may not invalidate the ordinance especially where the omission is due to clerical error, etc.

<sup>61</sup> Cf. statement by Mayor Mitchel of New York in *Proceedings of the American Academy of Political Science in the City of New York*, Vol. V, No. 3 (April, 1915), p. 14. Among other things Mr. Mitchel says: "There are a thousand things that consume time and effort and there is not enough time left for the mayor to supervise the work of the departments and to be actually as well as theoretically responsible for it."

holds the mayor responsible for the conduct of the administration. Indeed the mayoralty, even where it is weakest, has been marked for responsibility. The office is exposed to the influences of public opinion as is no other municipal office. It is unable to escape answering for its use of power, at least in matters upon which the public has made up its mind. To this scrutiny the mayoralty has responded. The following observations on the extent to which the mayoralty feels its responsibility were made more than a decade ago, but are more true today than when they were uttered: "In every city in which the mayor has been given independent powers of appointment and has been made the real head of the administrative organization of the city, the sensitiveness of the government to public opinion has been considerably increased. When rightly viewed the change (from council government) involves possibilities of popular control which we have hardly begun to realize. Almost every city in the country offers instances in which the mayor, when supported by popular opinion, has been able to withstand the combined influences of the council and any machine organization that attempted to direct his action. The lessons of this experience have left their impress upon the political thinking of the American people and explain the tendency to look to the executive rather than to the legislative authority for the solution of every difficulty." "To an increasing extent the American people are looking to the executive not only for the execution but also for the planning of municipal improvements . . ." "The vital interest of the citizen in strengthening the administration."<sup>62</sup> The record of the past decade has not tended to impair this estimate of the responsible character of the mayoralty. The appearance of many able and gifted men in the mayor's chair, the achievements they have been able to realize in administrations like those of Rolph, Hunt, McCormick, Head, Baxter, Johnson, Whitlock, and Mitchel, and above all the gradual augmentation of the powers entrusted to the mayoralty — all these bear testimony to the larger degree of responsiveness which the mayoralty begets in municipal government when its leadership and authority is established in administration.<sup>63</sup>

<sup>62</sup> See address by L. S. Rowe in the *Proceedings of the New York City Conference on Good City Government* (1905), pp. 174-175.

<sup>63</sup> Rolph of San Francisco, Hunt of Cincinnati, McCormick of Harris-

While one recognizes the foregoing facts, and admits the decided betterment which mayor government has meant to municipal administration, it is nevertheless true that this betterment has come chiefly with respect to the larger, more obvious, or more important features of municipal administration. There is still very much of irresponsibility, still many opportunities to dodge or shift liability for policies and promises not realized, for appointments not the best, for petty graft not eliminated, and for opportunities not seized. The problem of administrative responsibility is not adequately solved by the mayor system, even where its power is most nearly complete. The strength of the mayoralty is also its weakness; it is a political office and may be won by the popular as well as by the worthy; the people must "trust to luck to get a paragon" of virtue as well as of ability.<sup>64</sup> If the mayor system has done much to lift American city government out of the "hodge-podge of responsibility," inefficiency, and extravagance, it has at the same time fallen far short of producing and assuring in administration that liability for results, that skill and efficiency in administration, and that economy in operation that should normally characterize good government. The mayor system contains no guarantee that trained, expert, and professional talent will always be in charge of the interests and services of the municipality.

In concluding this survey of the mayor and administration it should be noted that on the whole the power of the mayor has tended to increase if the later charters which have adopted the mayor systems may be taken as the basis for judgment. The power of appointment and removal has been strengthened, and

burg, Pa., Head of Nashville, Tenn., Baxter of Portland, Me., Johnson of Cleveland, Whitlock of Toledo, Mitchel of New York.

<sup>64</sup> To put the matter concretely the election of administrators cannot fail to open the question of whether a city is to be governed by a political adventurer like Thompson of Chicago, or a trained administrator like Mitchel of New York. The opportunity for making a choice between these two types is not always presented, the elector sometimes being confronted with the job of selecting the lesser of the evils from the list of undesirable candidates. At best, the elector has not always demonstrated his ability to pick able and competent administrators, tho this apparent inability cannot be separated from the necessity under which he now labors of passing at the same time upon questions of public policy for which the respective candidates stand.

is now very widely recognized; the power of investigation has now been effectively developed in some cities; and with the exception of his judicial authority there seems to be little deterioration, if any, in the other administrative authority with which he has been clothed. The increase which is thus indicated in the mayor's position, does not, however, reveal the true extent of the development which has taken place. The latter can be appreciated only by taking into account the growth of American cities in size and importance. The mayors of many of our cities are today the administrative heads of corporations that include larger populations than some countries and many states. The mayor of New York City guides the destinies of a larger population than did the President of the United States a century ago. This element of size and growth of population promises to continue a more or less constant factor. Another development that will ultimately affect the position of the mayor is the movement for municipal home rule. But whatever the future has in store the directive force and power of the mayoralty in administration is today one of the most conspicuous features in our municipal system. This is in keeping with the trend in state and nation, especially in the latter where the dominance of the executive is largely established. It should not be forgotten, however, that American cities are in the midst of a season of almost feverish activity in experimentation with municipal forms and administration reconstruction. Approximately five hundred municipalities have altered their charters in the past fifteen years, and in the larger proportion of these alterations the mayor as the authoritative head of the administration has passed away. It is evident that the mayor system in administration is not only on trial, but has before it a struggle for existence.



## CHAPTER V

### THE MAYOR AND LEGISLATION

The development of the mayor's influence and power in municipal legislation has kept pace with the expansion of his authority over administration. The English doctrine has been that the mayor as an integral part of the municipal corporation must be present at council meetings if the latter are to be considered valid. Altho this rule does not obtain in the United States, except where specifically provided for, yet the actual position of the American mayor is relatively much more important in respect to legislation than it is in England, or than it has ever been heretofore in this country.<sup>1</sup> Not only does the mayor enjoy the growing authority which he exercises in the work of the city council, but he has, in some places, acquired important influence in the enactment of state legislation affecting municipalities. In certain cities he also has clearly defined powers with respect to the ordinance making function of boards and commissions which have tended to supplant the council. In this chapter the relations of the mayor to legislation, both in the legal and the political aspects will be considered. Attention will be directed in turn to his relations with the city council, with the municipal boards or similar agencies of local government, and with the state legislature.

#### THE MAYOR AND THE COUNCIL

First in importance and interest is the relation of the mayor to the city council, the representative body of the municipal corporation. This relationship may be viewed from three different angles: (1) the general status of the mayor as a factor in municipal legislation; (2) the powers of the mayor with regard to

<sup>1</sup> The word legislation is employed here to cover all enactments that have the force of law in municipal government, whether they emanate from the state legislature, the city council, or other bodies vested with ordinance making power.

council procedure and action; and (3) the extra legal influence exerted by him as party leader or administrative chief.

### *General Status*

The general status of the mayor in legislation approaches uniformity in its fundamental characteristics. As has been pointed out the English doctrine which would make him an integral part of the municipal legislature is not recognized in this country. This is due to the general theoretical acceptance of the principle of the separation of powers. Yet in practice American city governments of the mayor and council types nearly agree the mayor shall exert large influence upon legislation. The measure of his influence depends upon a variety of considerations. Among them are the following: (1) his charter powers and prerogatives; (2) his personality and party standing; (3) his position as contrasted with that of the council and other municipal authorities<sup>2</sup> in the general scheme of organization; (4) his legal relation to the council as a part of the legislative mechanism. The last two considerations demand our further attention at this point; the treatment of the first two constitutes the main body of the chapter.

The position of the executive is effectively contrasted with that of the municipal council or other local authorities in the organization of city government by indicating his relative position in the more important organizations which embody the mayor and council form. Thus New York, Baltimore, Chicago, and other cities differ greatly in the relative positions assigned to the different organs of government. In New York City, for example, the board of aldermen is relatively less important than is the city council in Chicago. This situation is produced by the powerful mayoralty which the New York charter creates, and is accentuated by the establishment of the board of estimate and apportionment and by its tendency to become the policy making body of the municipality. The result is that even the legislative functions of the council are limited to a marked degree. In New York City also the mayor's relation to municipal legislation is

<sup>2</sup> Such as boards of estimate and apportionment, borough presidents, and state controlled commissions or like agencies operating in the field of local government. In New York City the first two of these are especially important.

important, not only because of the weakening of the council, but by reason of his strong position on the board of estimate and apportionment, in which he has two votes. In Chicago, on the other hand, despite a strong mayoralty, the council continues relatively vigorous, insomuch that in municipal campaigns voters are urged to pay special attention to the election of councilmen rather than the choice of mayors, on the ground that a weak or vicious mayor can do comparatively little harm if the council is made up of clean and able men, while a good mayor would be more or less helpless if confronted by a council dominated by "gray wolves."<sup>3</sup>

The mayor of Baltimore is less powerful in legislation than is the executive in either Chicago or New York. The charter of Baltimore provides that "The mayor and City Council of Baltimore shall have power to pass all ordinances," etc., phraseology which recognizes the mayor as a distinct branch of the municipal legislature and which requires the coördinate action of both mayor and council to validate enactments.<sup>4</sup> In Seattle the legislative function of the mayor is even more clearly defined in the words, "The legislative powers of the City of Seattle shall be vested in a mayor and city council."<sup>5</sup> A similar situation exists

<sup>3</sup> This was especially noticeable in the campaign of 1915 when many voters felt that there was little choice between the candidates for mayor, both being something less than desirable. Those who were concerned for the character of Chicago's government centered their energies on the aldermanic contests. Their foresight has amply justified its exercise in the determined opposition which the council has offered to many of the policies of the mayor, especially those representing a distinctly backward step such as the partisan exploitation of the civil service. The controversy between the mayor and the council led in 1916 to one of the most bitter aldermanic campaigns in municipal history, the mayor throwing the whole force of his administration into the struggle in order to defeat certain "rebel" councilmen. The result was the vindication of the council.

<sup>4</sup> See the charter of the city of Baltimore, Sec. 218. Note also Secs. 1, 6, 220, and 221, the last two especially. To quote, "The style of all ordinances shall be: 'Be it ordained by the Mayor and City Council of Baltimore,' " and "Every legislative act of the mayor and the City Council of Baltimore shall be by ordinance or resolution." See, however, the discussion of the veto further on in this chapter.

<sup>5</sup> Charter, Art. 4, Sec. 1. This statement is subject, however, to the reservation that the people of the city of Seattle may legislate through the initiative and referendum.

in the cities of Milwaukee and Madison, Wis., in the last of which the mayor and aldermen form the common council, while in Milwaukee the mayor and common council form the "Municipal Government."<sup>6</sup> In general it may be observed it weakens the mayoralty to integrate it so closely with the legislative mechanism. This is true both in the mayor's legislative and administrative relations. Comparative independence is essential to strength in his legislative activity, while administrative interests seldom fail to suffer when swept into the legislative vortex. On the other hand the absence of close association of the mayor with the council, as in the recent St. Louis charter, does not necessarily produce relative superiority for the mayoralty.<sup>7</sup>

There have been many efforts to set up municipal governments that would comply substantially with the theory of the separation of powers. Two conspicuous examples are Philadelphia and Pittsburgh. The bicameral council obtains in both cities. The mayor occupies a much less favorable position, however, than does the president in the national model. The council is strong in both cities: in Pittsburgh the city council possesses all legislative power not expressly conferred on some other body or officer.<sup>8</sup> The mayor appears to somewhat better advantage in Philadelphia, but does not possess the means or the authority to dictate and control municipal legislation.<sup>9</sup> Perhaps the most striking instance of the incorporation of the doctrine of Montesquieu in a city charter is to be found in the case of Quincy, Mass. It is provided that "The executive department shall never exercise any legislative power, and the legislative department shall never exercise any executive power."<sup>10</sup> In more recent charters, how-

<sup>6</sup> In each of the two charters consult Art. 4, Sec. 1.

<sup>7</sup> The failure to create a powerful mayoralty was one of the criticisms urged against the St. Louis charter. The charter, on the other hand, appears to have gone as far in this direction as the laws of the state would permit.

<sup>8</sup> Cf. Pittsburgh, Charter, Sec. 1494. In Sec. 1492 it is affirmed that the council possesses "the power of the corporation."

<sup>9</sup> One of the principal defects in the recent Blankenburg administration was the inability of the mayor to get results from the council. The latter became increasingly hostile and contributed not a little to the defeat of the reform administration. The powers of the mayor in legislation are to be found in the charter, Chap. II, Secs. 11-31.

<sup>10</sup> Charter, Title 1, Sec. 2. With a minimum of exceptions such as pro-



ever, the recognition of the federal analogy has been accompanied by modifications that have tended to obliterate the formal independence conferred upon the legislative and executive departments. On the whole the executive has gained as a result of these modifications. The charter of Cleveland serves as an example. The council and the mayoralty are distinct and in the organization of their respective fields are independent of each other. In the conduct of their work, however, they are closely related, and on the whole the advantage in the coöperation provided for is decidedly with the mayor. While losing his position as presiding officer with the privilege of voting in the case of a tie, he gains for himself and his department chiefs the right to sit in council meetings, to take part in discussions, and to introduce ordinances. In addition the preparation of the budget is given to the mayor. Charter commissions in Los Angeles, Detroit, Baltimore, Toledo, Cincinnati, Newark, and other cities have recognized the desirability of increasing the influence of the mayor, generally at the expense of the council.

Various explanations have been offered for the decline of the municipal council as an organ of government and the corresponding increase in the position of the mayor. Quite generally the incapacity and corruption of the council is proffered as the reason for the rise of the mayor. The query inevitably presents itself — why are the councils incompetent? Inadequate systems of representation, the presence of corruption, and other reasons given hardly suffice to explain an incompetency that is thoroly established, especially in those cities whose problems of government have changed rapidly and have acquired increasing complexity. The explanation may, in part, be found in the nature of the council. It has many members, and numbers constitute a source of weakness in a period of readjustment. The average mind is not easily adjustable especially at the age when men become councilors; and councils are composed mostly of men with average minds. There may be some men in a council who are able to adapt themselves to the rapidly shifting exigencies of modern municipal life and social change, but they are comparatively few and always in a hopeless minority. The majority make its adjustments very slowly, sometimes not at all. The stimuli  
viding for coöperation in laying out of streets, the charter adheres to this principle.

which may be applied to assist members in extending their vision and readjusting their conceptions lose much thru being diffused upon many minds. There is a far better chance of finding one man gifted with a creative mind, one whose back is to the past, not to the future, and who is not wanting in moral and intellectual courage. Not nearly all mayors, nor even any large proportion of them have shown marked qualities of initiative and leadership. But in cases where these qualities are not wholly wanting, stimuli may be applied with some degree of success. The average mayor is of a somewhat higher type than the average councilman. The problem of readjustment is not so formidable. The pressure of increased responsibility, the demand for leadership, and the ease with which public opinion may concentrate upon him, combine to call into activity whatever imagination, whatever power of constructive thinking, and whatever capacity for leadership the mayor may possess. The expansion of the field of municipal activity and the consequent growth of administration have offered a fruitful field for the best he had to give. Handicapped by the millstone of checks and balances which the eighteenth century political theory bequeathed to municipal organization in this country, the mayoralty and its incumbents have nevertheless achieved a success which, when compared with the record of the councils, largely justifies the confidence which the public has come to repose in them.

In comparing the status of mayor in relation to legislation today with that of a quarter of a century ago, one must conclude that there has been a distinct advance in the position which he occupies. In those cities in which the most noticeable steps have been taken to increase his importance there is evident a tendency to establish some degree of responsible relationship between the mayor and the council, with the mayor as the acknowledged leader. It cannot be said, however, that this tendency is very far developed, and in no case does the mayor appear as a branch of the legislative organ. Finally, the continued decline of the council has served to augment somewhat the relative importance of the mayor, even in cities where no legal or charter alterations have occurred.

### *Legal Powers*

The legal powers of the mayor in respect to legislation are those which relate (1) to the initiation of municipal legislation,

(2) to the enactment of municipal legislation, (3) to the enactment of state legislation affecting municipalities.

In the initiation of municipal legislation the mayor has the authority to call special meetings of the city council, the power of sending messages to the council in which the affairs of the municipality are presented and in which measures may be recommended for dealing with the conditions described, the right to introduce bills for the consideration of the council and the power to prepare and submit the annual budget.

The power of the mayor to call special meetings of the council is almost universally recognized.<sup>11</sup> Its exercise lies, practically, in the discretion of the mayor. In Kentucky a general law provides that a call may be issued "when the interests of the city demand it," or "for special reasons."<sup>12</sup> In some charters occasions are specified when this power must be exercised. In St. Louis the organization of a new administration and the installation of officers-elect constitute such an occasion; in Beardstown, Illinois, after an election, the mayor is enjoined to call a special session of the council "to ascertain the outcome of the election." In the majority of cases, on the other hand, there is no effort to limit or prescribe the exercise of this power. It is very common, however, to provide that the reasons for the calling of the special meeting shall be communicated to the council members in writing.<sup>13</sup> The method of making the call is defined in a number of cities and includes personal service, the leaving of notices at the residences of councilmen, or publication in the official news organ of the city.<sup>14</sup> In the case of New York City the notice may also be

<sup>11</sup> Los Angeles' charter is an exception.

<sup>12</sup> Kentucky, General Charter Law for Second Class Cities, Sec. 56.

<sup>13</sup> This is true in New York (Charter, Sec. 37), Cleveland (Charter, Sec. 31), San Francisco (Charter, Art. 4, Chap. I, Sec. 5), Detroit (Charter, Chap. 7, Sec. 12); but assignment of reasons is not specified in the case of St. Louis, Seattle, Baltimore, and a number of other cities.

<sup>14</sup> Cf. New York, Cleveland, and Detroit charters, Secs. 37, 31, and 148 respectively. The New York provisions are typical and read: "Three days before any special meeting of the Board of Aldermen is held, notice of the time of the intended meeting and of the business proposed to be transacted, signed by the mayor, shall be published in the *City Record*, and at the same time the city clerk shall cause a copy of such notice to be left at or sent by post to the usual place of abode or of business of each member of the board of aldermen, but want of service of a notice upon any member shall not affect the validity of a meeting."

sent to the alderman's place of business, or may be sent by mail, tho failure to notify any member does not invalidate the meeting held. The latter provision does not appear in other city charters. In addition to the foregoing, the business specified in the call for a special meeting is usually the only business that may be considered. There are exceptions to this rule, however, as in the case of Kansas City, in which it is within the power of the council, when called in special session by the mayor, "to transact business as at a regular meeting."<sup>15</sup> In calling special meetings, the mayor must frequently observe certain requirements as to the time that must expire between the call and the time of meeting. There is no uniformity in this particular. Somerville, Mass., leaves the matter to the mayor; the general law of Wisconsin fixes six hours, Cleveland twelve hours, and the city of New York three days as the time which must elapse between the call and the meeting. In many cases, of course, no mention is made of this feature. On the whole there seems to be a disposition among charter makers to elaborate the clauses which bestow upon the mayor the authority to call special meetings, tho it can hardly be said that municipal executives have exploited the power to initiate legislation which this authority places within their reach.

The mayoral message is the second important means by which the municipal executive may initiate legislation. The message serves two purposes. In the first place it is used to inform the council as to the state of municipal affairs or to report upon local conditions. This use of it appears to be almost universal and is frequently enjoined as a duty.<sup>16</sup> The employment of the message

<sup>15</sup> Kansas City, Charter, Art. 2, Sec. 14. An interesting call for a special session of the council of Kansas City was sent out by Mayor Henry Jost on July 14, 1915, in which he convened the two chambers "to remain in constant and continued session until the council shall have passed requisite ordinances appropriating money adequately and properly to care for the entire business of the municipality," appropriations which the lower house had previously refused.

<sup>16</sup> The submission of such reports would appear to be mandatory in many cases, even the time for the submission of the annual report or message being specified. *Cf.* Seattle, Charter, Art. 5, Sec. 7; Baltimore, Charter, Sec. 22; Los Angeles, Charter, Art. 4, Sec. 41. The charter of Quincy, Mass., omits mention of such a duty, though as in the case of Charleston, S. C., the council is probably able to impose such a duty.



as a means of information or for the purpose of conveying reports has in a very large proportion of cases become more or less perfunctory, and in the hands of the majority of municipal executives appears to have developed no particular importance. A perusal of many of them reveals the fact that the majority are dull and colorless. They amount to little more than letters of transmittal accompanying departmental reports, or summarizing the latter. Many are made the means for comparing the work of one party with its predecessor in power, portraying the evil condition in which the administration found things and the great progress that has been made since the incumbent assumed the direction of affairs. In not a few cases these reports are either misleading or uninforming. On the other hand a considerable and respectable proportion of these reports on local conditions are worth reading. They are vigorous and illuminating, and betray a grasp of local conditions that is comprehensive and at the same time conscious of the significant features,—as viewed from the standpoint of the public interest.<sup>17</sup>

<sup>17</sup> For examples of messages that are wanting in color see the following: Message of Louis P. Fuhrmann, mayor, to the city council of Buffalo, January 3, 1910; message of Hon. Wm. J. Gaynor, mayor, to the board of aldermen, New York City, January 23, 1912. This message is quite typical of a large group of mayoral messages, tho it should be said that not all of Mayor Gaynor's were of this type. See also the message of Wm. Thum, mayor, to the city council of Pasadena, Calif., May 5, 1913; and the message of John Schon, mayor, to the city council in San Diego, Calif., April 30, 1906, and May 6, 1907. The sixth annual message of Mayor George W. Tiedeman of Savannah, Ga., on January 22, 1913, will illustrate the tendency to compare the achievements of an administration with the conditions which had existed under a prior regime. Of messages that are uninforming that of Charles F. O'Neill, mayor, to the common council of San Diego, Calif., on May 5, 1913, is a good example. The annual message of Mayor John F. Miller of Seattle, dated January 4, 1909, dealt with the cost of operating the departments of the city government and represents a good piece of work; likewise the two annual reports and messages of Mayor George F. Cotterill of the same city, dated January, 1913 and 1914 respectively, are worth while efforts. On the other hand messages often represent little but bombast. Note the following from a message by Mayor J. G. Utterback of Bangor, Me., during the year 1913-1914: "In most convincing tones the voice of the people has been heard demanding a strict business administration of their affairs." The message suggests the creation of the office of city auditor and then near the close is to be found this choice specimen: ". . . consider Bangor's interests first. Eat Bangor

Of greater importance is the second purpose which the mayoral message serves, that of being a vehicle thru which the mayor may make recommendations regarding measures which he deems to be expedient for the welfare of the city. In the majority of cities the submission of recommendations is laid upon the mayor

bread, smoke Bangor-made cigars, trade with Bangor merchants." Even this is somewhat more definite in the way of a recommendation than the suggestion of Mayor George Alexander of Los Angeles to the city council on January 6, 1913. He was discussing municipal markets and the high cost of living and by way of recommendation said, "Why not return to the good old-fashioned way of carrying baskets to the market — only make it a public market — and cut down the high cost of living." Some messages, however, carry recommendations that give evidence of constructive thought and a program, the parts of which are clearly related. See the message of Mayor Rudolph Blankenburg, dated September 19, 1912, relative to the problem of increasing the current revenues and the borrowing capacity of Philadelphia. It was well worked out both in conception and presentation. Also the special message of Mayor George F. Cotterill of Seattle, dated March 17, 1913, relative to public utility regulation and administrative efficiency and economy illustrates the importance of adequate and readable treatment and executive vision. There are many examples of messages that have been intended for other audiences than the city council, and one of the most striking messages of this character was the annual message of Mayor James C. Haynes of Minneapolis, dated June 14, 1912. The message was a plea for municipal ownership and the data compiled showed painstaking effort. Copies of the message were mailed together with a letter of explanation and a return post card, to many citizens. The letter was signed by the mayor and read as follows: "Herewith I am sending you copy of the mayor's annual message for the current year. It is addressed to the people as much as to the city council on the assumption that each citizen is as much interested in the future of this city as is the mayor or any other public official.

"This message points out how the city council can save annually over one million dollars and use the same to beautify and improve the city, thereby making Minneapolis preëminent among American cities within the next decade; and it contains information and ideas which if true are vitally important to every citizen, and if wrong should be corrected at once. May I therefore request you to give it early and careful consideration and to forward any criticism or suggestion you may have to offer as soon as convenient. Also to fill out and return the enclosed card. The latter requires no signature."

The enclosed card provided for a sort of straw vote on the question of municipal ownership. Three questions were asked, upon the first two of which the person filling it out was asked to answer "yes" or "no." They were, (1) Do you favor municipal ownership and operation of all public

in directory language, especially in connection with the annual message. For example the Seattle charter provides that "It shall be the duty of the mayor annually . . . to recommend the adoption of such measures as he may deem expedient and proper." In this and similar cases, however, a clause is added authorizing the sending of special messages "from time to time" as the mayor may deem useful and proper. It is apparent at once that in the opportunity which the message in this form offers there lie large possibilities. In effect, it has "become a right to initiate measures" in the council; "for a message from the mayor is invariably referred to the appropriate council committee for report, and this report puts the matter squarely before the council for action."<sup>18</sup> Moreover, it enables the mayor to

utilities using the streets, and (2) Do you favor such ownership of both of the plants of the lighting companies. The third question asked the recipient to indicate which of the lighting plants he preferred for municipal ownership if he favored the ownership of but one on the part of the city.

Not infrequently the mayors use their message power in the way just described, but a development of this power is to be found in the disposition to address messages to the "citizens" of the municipality. Occasionally mayors publish and distribute their messages at their own expense.

There is available today a large body of material comprising mayoral messages and the reports that mayors make from time to time. Much of it is fugitive but the work of collecting it has been begun. Within a few years it should be possible to make some intensive studies within the field which this material covers. Indeed this material, together with much other material in the form of municipal documents, is beginning to assume formidable proportions. It has yet to be thoroly explored and so retains something of the character of a "primeval forest."

<sup>18</sup> Cf. Munro, *The Government of American Cities*, pp. 222, 223. Mr. Bayles in *The Office of Mayor in the United States*, rather takes the contrary views and intimates that the recommendations made by mayors in "conventional" messages are buried in committees. It must be acknowledged that the force of the mayor's communications is often less than might be desired. The mayors of Providence have for half a century urged the acquisition by the city of the water front, but the matter has never received serious consideration by the councils. Even when the mayor presents bills already drawn, and places the administration squarely behind them the councils often fail to face the issue presented on its merits. On the whole it appears that Professor Munro's statement describes the prevailing tendency accurately, though there are many exceptions to this tendency. Some of these are indicated by Dr. Munro in the paragraph following the one from which the quotation is taken. It seems, too, that the situation is somewhat modified in the smaller cities where the council retains a some-



select the policies and measures about which his friends and partisan supporters in the council may rally, a situation which becomes increasingly significant in proportion as the mayor is a party leader, or as his proposals coincide with or antagonize the views of the majority party organization.<sup>19</sup> Finally, the power of making recommendations regarding municipal affairs permits the mayor to attract public attention to the more important issues and to focus public opinion upon the council while these issues are under consideration. Indeed, by means of special messages the main issues may be taken one by one so that a mayor gifted with political insight and devoted to the public interest may rally to his assistance such citizen support as is available in behalf of his proposals. Some mayoral messages read as tho they were intended for another audience than the respective councils to which they were addressed.<sup>20</sup>

Not only may the mayor call special meetings of the municipal council, and deliver reports, send communications, and make recommendations by means of the mayoral message, but he is in many cities authorized to introduce measures. The presentation of administration measures has, indeed, been frequent enough in cities where the mayor lacked express authority for pursuing such a course. Nevertheless, it is significant that the power to offer measures, full drawn, and with the stamp of administration upon them, is now being expressly conferred upon the mayor by municipal charters. The charter of Cleveland, for example, provides that "the mayor shall have the right to introduce ordinances. Practically the same phraseology is to be found in the charters of Toledo and St. Louis, both twentieth century charters. Whether this development will be followed by other cities,

what more important place in comparison with the mayoralty than it does in larger centers where the development of administration has tended to overshadow it. For the reference to Bayles see the work cited, pp. 35, 36.

<sup>19</sup> For a somewhat fuller discussion of this point see Munro, W. B., *The Government of American Cities*, pp. 222, 223.

<sup>20</sup> See reference to the message by Mayor Haynes of Minneapolis. A direct appeal to the electors was made by Mr. Blankenburg in "A New Year's Letter to the Citizens of Philadelphia" on January 1, 1913. It was a readable account of the work of the administration during the preceding year. A perusal of some of the messages of Josiah Quincy almost a century ago reveals the fact that he appreciated keenly the value of writing for a larger audience than the municipal council.



in the amendment and revision of their charters, it is too early to say. It may foreshadow the ultimate establishment of some sort of responsible government, tho the path of its evolution promises to be materially different from that followed by the English parliamentary type. In effective leadership the Boston charter of 1909 appears to be far in advance of any others in this country. Indeed, its provisions are almost revolutionary, in that the mayor may force the early considerations of measures which he proposes. In the words of the charter (Section 2): "The mayor from time to time may make to the city council in the form of an ordinance or loan order filed with the city clerk such recommendations other than for school purposes as he may deem to be for the welfare of the city. The city council shall consider each ordinance or loan order presented by the mayor and shall either adopt or reject the same within sixty days after the date when it is filed as aforesaid. If the said ordinance or loan order is not rejected within sixty days *it shall be in force as if adopted by the city council unless previously withdrawn by the mayor.* Nothing herein shall prevent the mayor from again presenting an ordinance or loan order which has been rejected or withdrawn." In commenting upon the operation of the charter amendments the finance commission in its report of January, 1914, remarked: "Only those provisions which were intended to restrain the abuse of power have been fully tested. . . . The provisions which afford an opportunity to conduct the city's business upon a high plane of efficiency and morality have not been properly utilized." With respect to the passage of loans, however, there was noted a "marked improvement." One need hardly marvel at the failure of the ordinary mayor to exploit all the powers which the Boston charter bestows. Indeed, it is quite pardonable in the municipal executive modestly to doubt his sufficiency for all the opportunities opened up to him by those who see in the mayoralty the hope of city government, in the field of legislation as well as administration. The Boston charter, however, presents a logical development of mayor government, a development which makes him responsible for the government of the city and clothes him with powers adequate to meet his responsibility.

The power of the mayor to prepare the municipal budget is properly classed among his more important prerogatives with re-

spect to the initiation of legislation. There has been a decided tendency toward vesting this power in the mayor, tho in some cities such as New York and St. Louis the authority is shared by the board of estimate and apportionment.<sup>21</sup> But in Boston, Cleveland, and a few other cities the mayor prepares and proposes the budget to the council. In the case of Boston this power becomes very important because the council may neither originate a budget, nor increase any item in the one proposed, nor increase the total of the mayoral budget.<sup>22</sup> It has power only to reduce or reject the proposals made to it. In Cleveland the charter specifies the nature and extent of the duty which this power to prepare and propose the budget carries with it.<sup>23</sup> The drafting of the appropriation ordinance is specifically reserved to the council, in Cleveland and Toledo, tho in Boston, St. Louis, and some other cities the appropriation bill is drafted either by the mayor or by the board of estimate and apportionment.<sup>24</sup> In practice also, the mayor, even in cities where he is not vested

<sup>21</sup> Cf. St. Louis, Charter, Art. 16, Secs. 1, 2, 3; New York, Charter, Sec. 226. The situation in New York City has not been materially altered so far as the mayor and the board of aldermen are concerned by the mayor's decision to present an executive budget to the board of estimate and apportionment.

<sup>22</sup> Boston, Amended Charter, Sec. 3. The mayor may also submit supplementary budgets any time prior to the date upon which the annual tax rate is determined.

<sup>23</sup> The budget is expected to set forth the following: (1) an itemized estimate of the expense of conducting each department; (2) comparisons of such estimates with the corresponding items of expenditure for the last two complete fiscal years and with the expenditures of the current fiscal year plus an estimate of expenditures necessary to complete the current fiscal year; (3) reasons for proposed increases or decreases in such items of expenditure compared with the current fiscal year; (4) a separate schedule for each department showing the things necessary for the department to do during the year and which of any desirable things it ought to do if possible; (5) items of payroll increases as either additional pay to present employees or pay for more employees; (6) a statement from the director of finance of the total probable income of the city from taxes for the period covered by the mayor's estimate; (7) an itemization of all anticipated revenues from sources other than the tax levy; (8) the amounts required for interest on the city debt and for sinking funds as required by law; (9) the total amount of outstanding city debt with a schedule of maturities of bond issues; (10) such other information as may be required by the council.

<sup>24</sup> Cf. Cleveland, Charter, Sec. 42; also St. Louis, Charter, Art. 16, Sec. 3. The mayor of New York has assumed responsibility for the preparation of

with budgetary authority, does really exercise a very powerful influence. The Chicago budget of 1916 was known as the mayor's budget and was adopted by the council after an exceptionally bitter struggle.<sup>25</sup> There seems to be general agreement among students of municipal government that the mayor should be largely responsible for the budget in preference to having it prepared by the council itself. As yet, however, no general or charter acceptance of this principle obtains but there has been a decided trend toward it or some modification of it, especially in the larger centers.

### *Enactment of Legislation*

In the enactment of municipal legislation the mayor's authority includes the following powers: (1) to preside over the sessions of the council; (2) to sit in council meetings and take part in the discussion of measures; (3) to cast the deciding vote in case of a tie; (4) to approve and sign ordinances; (5) to veto acts of the council. The first four of these are positive in their nature; the last and most important is negative.

The power of the mayor to preside over meetings of the council is evidently passing away. Writing in 1895 Mr. Bayles said: "It is very generally today an express duty of the mayor to preside at meetings of the city council. The exceptions are found chiefly among the largest cities such as Boston, New York, Brooklyn, Philadelphia, Cincinnati, Detroit, and Omaha, and where the strictly executive powers of the office have been most developed." In 1913 Professor Munro observes: "It is true that in a few cities, notably in Chicago, the mayor is the council's presiding officer; but this is a practice quite out of accord with the general rule, for in by far the larger number of American cities the council chooses its own presiding officer, and the mayor does not take any part in its sessions, or even attend them." An examination of the charters of a representative number of cities, and also of general state laws, indicates that the number of large cities in which the mayor presides at council meetings is very small, Chicago and San Francisco being the most important.<sup>26</sup> There are, an executive budget which he submits to the board of estimate and apportionment.

<sup>25</sup> The state legislature by act of June 29, 1915, authorized the council to create a board of estimate, but the act had not yet gone into effect.

<sup>26</sup> Chicago operates under the general state law of Illinois; the position



however, many cities operating under general state law in which the mayor still acts as the presiding officer. In the states of North Dakota, Wisconsin, Illinois, Indiana, and Idaho, for example, the mayor presides over the council meetings.<sup>27</sup> It should be observed, however, that, despite the number of cities which come under the general law cited and others similar to them, it can no longer be said that it is "very generally" "an express duty" of the mayor to preside. But the survival of this power serves in many places to bring the mayor into an important relation with regard to the enactment of legislation. On the other hand it is highly improbable that this power or duty materially strengthens the mayor's position. Indeed if one compares the real authority of the mayor in cities where the mayor presides over the council with his influence in legislation in cities like New York, Boston, Cleveland, Seattle, and many others where he does not preside, one is led to conclude that the power to preside contributes no strength to the mayor's position in legislation except under circumstances where the council possesses substantially greater authority than it does in most of the larger cities. Moreover, this authority of the mayor in legislation is secured at the expense of his independence in administrative affairs especially when he becomes enmeshed in the logrolling methods of the council.<sup>28</sup> It is significant that in none of the more important modern charters is the mayor expected to function as the presiding officer of the council.

of the mayor in San Francisco is declared in the charter, Art. 4, Chap. I, Sec. 5. In New York and San Francisco ex-mayors may sit in council meetings but have no vote.

<sup>27</sup> The charter law in North Dakota provides that the mayor shall "preside at all meetings" of the city council. In Wisconsin he presides in cities of the "second, third and fourth classes" (General Charter Law, Sec. 38); in Indiana he presides in cities of the "third, fourth and fifth classes" (An Act Concerning Municipal Corporations, Sec. 49).

<sup>28</sup> In his dissertation on *The Office of Mayor in the United States*, published in 1895, Mr. Bayles favors the passing of the mayor's right to preside over municipal councils. He says: "The exemption of the mayor from this tiresome and often uncongenial task of acting as presiding officer will surely develop many advantages. The executive and legislative departments of municipal government will become more distinct, and their influence upon each other will broaden and deepen, and responsibility, that necessary balance wheel for all political machinery, will become more and more a factor to be relied upon." In another place he indicates that such exemption would be an advance in administration (pp. 36, 37).



While the mayor has thus been losing the right to preside in council meetings he has in many cases the right to sit in these meetings, and to discuss the measures which are presented. This practice has met with recognition in such cities as Cleveland, St. Louis, and others, and was proposed by the charter commission of Cincinnati in 1914.<sup>29</sup> In Boston the mayor is privileged to attend council meetings to address that body "upon such subjects as he may desire."<sup>30</sup> He may also be required to attend for the purpose of answering inquiries previously submitted in writing.<sup>31</sup> The right of attending council meetings and of taking part in the discussion appears to offer all the advantages that may flow from the right to preside, except that of applying the rules and of voting in case of a tie. It enables the mayor to retain his administrative independence and at the same time exert upon the council directly whatever measure of personality, influence, and argumentative ability he may possess. The separate organization of the legislative and executive departments are more clearly maintained and yet an important and effective relationship between these departments is established.

The power of the mayor to vote in the enactment of ordinances is usually vested in him as presiding officer and is restricted to cases in which the council has balloted to a tie. Thus in Illinois cities, including Chicago, the general law of the state provides that the mayor "shall not vote except in case of a tie, when he shall give the casting vote." Provisions that are similar in form or substance are found in the general laws of other states.<sup>32</sup> In

<sup>29</sup> See Cleveland, Charter, Sec. 75: "the mayor shall have the right . . . to take part in the discussion of all matters coming before the council;" St. Louis, Charter, Art. 7, Sec. 1; the charter proposed for Cincinnati but defeated on July 14, 1914, Sec. 66; Toledo, Charter, Sec. 70; Utica, N. Y., Sec. 32.

<sup>30</sup> Amended Charter of 1909, Sec. 7. The mayor may be represented by the head of a department.

<sup>31</sup> *Ibid.* This development is interesting inasmuch as it recognizes the principle of the interpellation as employed in European governments. It has not been copied in any of the later charters. The distinction between it and the council's right of investigation has, perhaps, not been clearly appreciated.

<sup>32</sup> Indiana, An Act Concerning Municipal Corporations, 1905, Sec. 49. This is true of the cities of the third, fourth and fifth classes only. North Dakota, The Municipal Charter Act, Sec. 17. See also Wisconsin, General Charter Law, Chap. VII, Sec. 49. Cities of the first class are not included.

Charleston, South Carolina, where the mayor is an integral part of the council, his voting power is apparently not restricted, tho he does not have a veto. A number of cities expressly prohibit the mayor from voting in meetings of the council and where ex-mayors are permitted to sit in the council the right to vote is denied.<sup>33</sup> Broadly speaking there has been no gain in the importance of this power during the last twenty years. Certainly it has no place except where the mayor continues to function as the presiding officer, or where the council shares in the appointment of administrative officials. It does not contribute to the mayor's position and strength in the municipal government to compensate for the confusion of legislative and administrative functions to which it leads in actual operation. In common with the power to preside, the right to vote is rejected by more modern charters.

### *Approval and Veto*

The first three of the mayor's powers in the enactment of council measures, viz., the right to preside, the right to a seat and to discuss, and the right to give the casting vote may be described as his powers of immediate or active participation. There remain two other powers which are very closely bound up with each other inasmuch as a refusal to exercise the one is in a few cases tantamount to an exercise of the other; these are the power of approval and signature and the power of veto and may be described as powers exercised in detachment from the actual proceedings of the council.

The power of approval and signature is almost universally recognized by municipal charters and general laws as a feature of the mayoral system. In some cases it extends to every act of the council except those which relate to its own organization, or internal affairs. Thus in Somerville, Mass., "every ordinance, order, resolution or vote of the board of aldermen" with the exception just noted, "shall be presented to the mayor" for his approval.<sup>34</sup> His approval is indicated by his signing the record

It is interesting to note that in this law the mayor is not to be counted in determining whether or not there is a quorum. Compare with Charleston, S. C., where the mayor and a proportion of the aldermen do constitute a quorum. (Act of December 23, 1879.)

<sup>33</sup> St. Louis, Charter, Art. 7, Sec. 1; Cleveland, Charter, Sec. 75.

<sup>34</sup> Somerville, Charter, Title 3, Sec. 16. Cf. also the charters of the following: Quincy, Sec. 17; Baltimore, Sec. 23; Covington, Ky., Sec. 60;

of the council. It is not generally agreed, however, that all council acts other than those relating to its own internal affairs shall be submitted to the mayor. The Kansas City charter specified the submission of ordinances only.<sup>35</sup> The charter of Detroit expressly excepts from presentation to the mayor, "resolutions making appointments to or removal from office" and "ordinances and resolutions for the fixing of the annual estimates and salaries, and for the payment of debts and liabilities previously and lawfully contracted."<sup>36</sup> The question of what constitutes "approval" by the mayor is one upon which the courts have not been entirely agreed, some holding that the mayor's signature was essential to indicate his approval. The specific provisions of some charters warrant this view. The New York charter, for example, provides that if the mayor "approve it (an ordinance or resolution), he shall sign it." The language is directory, but the signature is the evidence of the executive's approval. In some states other acts such as an affirmative vote, publication as having been approved, the attestation of the minutes, etc., have been accepted as indications of the mayor's approval of council acts.<sup>37</sup> The exercise of the power cannot, however, be delegated and "involves in the highest degree the exercise of the discretion of the chief executive."

There has been little change in the mayor's power of approval in the last two decades. The language employed in conferring this authority is very much the same in the later charters as in those of a quarter of a century ago.<sup>38</sup> The extension of the mayoral veto to include items in bills or ordinances has, of

Lewiston, Sec. 119; Boston, Amended Charter of 1909, Sec. 4; New York City, Sec. 40.

<sup>35</sup> Charter, Art. 3, Sec. 5. In Rochester, New York, and Seattle, all legislative acts must be by ordinance and these are to be presented to the mayor. Rochester, Charter, Sec. 122.

<sup>36</sup> Detroit, Charter, Chap. VII, Sec. 13.

<sup>37</sup> New York, Charter, Sec. 40. Bayles, *The Office of Mayor in the United States*, pp. 40-44, contains a summary of the power of approval from the standpoint of administrative law, and cites numerous decisions affecting the method by which the power is exercised in the various states.

<sup>38</sup> Cf. the charter of Cleveland, Sec. 40; St. Louis, Art. 4, Sec. 17; proposed charter of Cincinnati, Sec. 59. The phraseology in the Boston charter of 1909 is similar to that which obtains in the Quincy charter of 1888, except that the latter enumerates as additional exceptions the following: measures relating to council officers or employees, to the election or duties

course, enlarged the power of approval to the extent that it may now be applied to parts of measures and denied to other parts. The actual importance of the power is difficult to determine. In nearly all cases want of approval by the mayor does not invalidate the measures, and, indeed, the latter usually go into effect within a fixed time, unless the mayor expresses his disapproval by the veto. In practice it may be said that the power, coupled with that of the veto, assures the mayor that he will be consulted in municipal legislation, it secures an opportunity for a review and consideration of enactments aside from that given in the council chamber, and it calls forth the opinion of the administration with regard to legislative proposals and ordinances.

The time which has been granted to the mayor for the consideration of council enactments is usually ten days,<sup>39</sup> but there is some disposition to lengthen this period. Thus in Boston he is given fifteen days, and in St. Louis twenty days. With the increasing mass of legislation the exercise of the power of approval becomes largely perfunctory with respect to much of it unless the executive is given a longer period.

The power of approval when exercised with respect to items in appropriation bills gives to these items the full force of an ordinance "in like manner as a bill approved."<sup>40</sup> The value of this power is apt to be overlooked in contrast with the more obvious importance of the power to veto items in such bills.

Of the legal powers of the mayor in respect to legislation none except the power of approval is more widely recognized than is the veto power.<sup>41</sup> Copied from the executive veto in the national and state governments it has been applied to municipal government wherever the mayor and council type of organization has undergone serious development. Municipal charter makers

of the auditor of accounts or comptroller, to the removal of the mayor, or to the declaration of a vacancy in the office of mayor." Charter, Sec. 17.

<sup>39</sup> Ten days is set in New York, Baltimore, Cleveland, Kansas City, Seattle, San Francisco, and Los Angeles, while in Illinois, North Dakota, and Norfolk, Va., the period is but five days. Many other cities might be added to this list but enough have been cited to show that the ten day period is by far the most common one.

<sup>40</sup> Cf. St. Louis, Charter, Art. 4, Sec. 17.

<sup>41</sup> Twenty years ago as well as today the only important exceptions under the mayor and council plan were the cities of North Carolina and Tennessee. The mayor of Charleston, S. C., does not have the veto power.



have experimented with it in many forms, from that which requires but a majority vote to overrule it, to the absolute veto, with the pocket veto, the selective veto, and the most common qualified veto in which from two-thirds to three-fourths of the council is necessary to overrule it. In all of its forms it expresses some active and positive disapproval of legislation by the executive and has become his most important means for the control of such legislation.

The suspensive veto, or that which requires a bare majority vote of the council to overrule the mayor's negative, exists in some cities of Texas. The veto of the mayor merely operates to delay an ordinance from going into force, pending repassage by the council. At best it is a check upon hasty legislation and gives opportunity for a determined opposition to make its power and influence felt. The suspensive veto also exists in the selective form, applicable to ordinances and resolutions making appropriations. It is evident, however, that the creation of a strong mayoral control and responsibility in legislation is not to be effected under veto provisions of this sort. The suspensive veto, except for its selective power, is the earliest form in which it was employed in American cities and the whole history of its development has been in the direction of requiring a larger proportion of the council than a mere majority to overrule it.

The pocket veto has rarely been found in municipal governments though it has not been unknown. In Kentucky, for example, the general law for second class cities under the federal plan provides that "should the mayor fail to approve a proposed ordinance or resolution within twenty days after presentation to him, he shall be deemed to have disapproved the same, and thereupon the same course shall be pursued in the council with reference thereto, as if he had in fact disapproved the same."<sup>42</sup> On the other hand most city charters expressly deny the pocket veto, by providing that if the mayor fails to approve a measure or to return it with his objections it shall "take effect as if he had ap-

<sup>42</sup> General Charter Law, Sec. 60. The existence of the pocket veto in city government has usually been ignored or denied. Cf. Munro, *The Government of American Cities*, p. 224. There are now no cities operating under this act, since 1915 all of them having adopted the alternative commission form.

proved it.”<sup>43</sup> The pocket veto appears to be without justification either in experience or theory as far as the field of municipal government is concerned. It has existed only in isolated cases, and has failed to commend itself to those responsible for drafting the charters under any one of our principal municipal systems. It may properly be considered as an unusual and unpromising feature.

The most generally accepted form of the veto is that which requires a vote of from two-thirds to three-fourths of the council to overcome the negative of the mayor. The proportion varies considerably, tho the large majority of cities operating under individual charters and many general laws provide that two-thirds of all the members elected to the council must vote to set aside the veto.<sup>44</sup> In Baltimore and Rochester and under the general laws of Wisconsin the proportion is fixed at three-fourths of the entire council. In San Francisco fourteen out of eighteen supervisors are necessary to defeat a mayoral veto. But whether the proportion is two-thirds or higher the result is an effective executive veto. It is difficult to overcome and in the hands of a determined mayor becomes a powerful factor in the relations between the municipal legislature and the executive. Strengthened as it usually is by the selective feature it illustrates very clearly the disposition of municipal charter makers to trust to one man power in the control of legislation as well as of administration. The selective veto permits the mayor to veto items in appropriation ordinances,<sup>45</sup> an authority which when combined with his power to initiate the municipal budget, is of imposing proportions, and certainly impairs the responsibility of the council in the field of municipal finance. With the exception of some smaller cities and a few general state laws the selective veto is today an established feature in municipal charters. The propor-

<sup>43</sup> San Francisco, Charter, Art. 2, Chap. I, Sec. 16. This provision is typical in substance, tho the phraseology frequently differs.

<sup>44</sup> Cf. the charters of Los Angeles, Seattle, Kansas City, Detroit, St. Louis, Cleveland, Toledo, Indianapolis, and the general charter laws of North Dakota, Illinois, and Indiana for the requirement that a vote of two-thirds of the council is necessary to overcome the veto.

<sup>45</sup> See the Kansas City charter, Art. 3, Sec. 6, for examples of provisions conferring the selective veto. Also the St. Louis charter, Art. 4, Sec. 17.

tion of council votes necessary to overcome it is the same as for the ordinary veto.

An absolute veto is vested in the mayor in the cities of New York and Boston. In the former the strength of the veto power varies according to the kind of measures under consideration. Ordinary measures, if vetoed, may be reënacted by a vote of two-thirds of the aldermen. Financial measures give to the mayor a power which it takes three-fourths of the members of the board to overcome. In the case of franchise measures the negative of the mayor is final. Boston has gone one step further. In the amended charter of 1909 it is provided that every appropriation, ordinance, order, resolution, and vote of the city council must be presented to the mayor, and if returned by the latter within fifteen days with objections, or if in the case of appropriation measures he objects to any items either in whole or in part, the actions of the council to which he objects "shall be void." This is the absolute veto. Coupled with the mayor's control over financial legislation,<sup>46</sup> the veto tends to make the mayor the dictator in municipal legislation.

The development of the veto in the American municipal system is unique. It has run the entire gamut from the weak suspensive veto, to the qualified, selective, and finally now the absolute veto. Its growth in importance has kept pace with that of the mayor's other prerogatives, and there can be little doubt that it has contributed very largely to the exaltation of the executive over the council. The veto power was originally intended to be the means by which the executive might protect itself from the encroachments of the legislative branch of the government. The power does not now need to be justified on this ground in municipal government, if indeed there was ever such warrant. In fact, no one imagines that it was meant to serve that purpose in present day charters. It is rather intended that it shall be used to check and curb municipal legislation, and its increased use in this direction has been followed by the enlargement and further strengthening of the power itself.

<sup>46</sup> This control enables him to initiate "all appropriations" either in the annual or supplementary budgets and only permits the council to "reduce or reject any item, but without the approval of the mayor" not to "increase any item in, nor the total of a budget, nor add any item thereto," nor "originate a budget."

A perusal of many of the veto messages penned during the past fifteen years by mayors of a dozen representative cities reveals no flagrant abuses of the power entrusted to them. Some vetoes are defended on broad grounds of public policy, some for reasons of economy, some because of non-compliance with charter provisions or state law, some on account of poor drafting and the incorporation of vague or indefinite provisions, and occasionally a veto for the purpose of protecting some other organ of city government, such as a board of estimate and apportionment, in its functions. A study of these vetoes and the acts which gave rise to them together with the circumstances surrounding them in so far as they could be ascertained indicated that on the whole the mayoral power had been wisely exerted. Mr. D. B. Eaton in his *The Government of Municipalities* suggests that the veto power of the mayor tends to secure careful deliberation on the part of the council and large majorities for measures enacted. He contends also that its possession renders the mayoralty more dignified and responsible and therefore more attractive to men of high character and honorable ambition.

It is apparent, on the other hand, that the executive veto as employed in actual practice is not to be understood or described merely by a consideration of the veto messages delivered, nor by the observations and conclusions offered in charter conventions, nor by comparing it with its prototypes in federal and state government. The veto messages show the power at work under the most favorable conditions, charter makers' speeches are apt to be little more than expressions of personal opinions based on theory, and comparisons are likely to be misleading. The mere threat of the veto may be as effective as its actual use and may render the latter entirely unnecessary; and its effectiveness is scarcely diminished because the threat is directed against a good measure, or is employed for trading purposes to gain support for the executive, or is used to befog issues and shift responsibility to the confusion of the electorate. Indeed, the real significance of the veto power lies not so much in its exercise as in its existence and the possibility of its being exercised. This fact has led Professor W. B. Munro to question whether "the veto has, or ever had, any proper place in the domain of local government," a question which he answers by denying the necessity of the veto to maintain a theoretical balance of power as long as the power



of the state is at hand to effect readjustments. He further indicts the abuses of the power in actual practice, abuses characterized by the bulldozing and browbeating of councils "in cases without number," and by trading and "political jugglery." These defects, he suggests, warrant the relegation of the mayoral veto power to "the political scrap-heap."<sup>47</sup> Occasionally there have been proposals made for taking the veto power from the mayor, as in the Chicago charter convention of 1906. In this case it was proposed that the veto be lodged with the president of the council, but the proposal received little consideration, and in fact the mayor's veto was retained without roll call.<sup>48</sup> On the contrary, in cities having the mayor system the tendency is to strengthen the veto either in its qualified form or by the adoption of the absolute veto.<sup>49</sup>

<sup>47</sup> *The Government of American Cities*, pp. 224-226. An earlier discussion of the veto power by Mr. Bayles contributes almost nothing to settlement of the question raised by Dr. Munro, being content with viewing it from the standpoint of administrative law. See *The Office of Mayor in the United States*, pp. 45, 46, and 47.

<sup>48</sup> In fact there was no discussion. Following a motion that the proposal to transfer the veto to the president of the council be laid on the table, a proposal that the veto be made suspensive in character and subject to being overruled by a majority vote was rejected without discussion. The qualified veto proposal was then reached. A motion to adopt it prevailed without argument. (*cf. The proceedings of the Chicago Charter Convention, 1906*, pp. 74, 93, 94.)

<sup>49</sup> The Boston Finance Commission in its recommendations for the adoption of the absolute veto said:

"If there is to be but one elective council, there should be a check upon its action more effective than the qualified veto power now possessed by the mayor. Such a check can be secured by enlarging the power of the mayor over appropriations, loans, franchises and ordinances. The commission recommends that the mayor be given a concurrent vote in all matters passed on by the city council. This means either an absolute veto, or the right of initiative on his part. The commission recommends a combination of the two plans. The annual appropriation bill or budget should originate in legal theory, as it does now in practice, with the mayor; while all other acts and votes of the city council should be subject to his approval."

"Appropriations from revenue and taxes should be submitted by the mayor to the city council, which should have the power to eliminate or decrease items, but not to increase or add items. A similar provision, but varying in details, is found in the charters of New York, Baltimore and Cleveland, and is recommended by the National Municipal League for general adoption by the cities of the country. All other acts, votes and reso-

In concluding this survey of the mayor's actual authority to participate in municipal legislation one is forced to recognize that the positive powers which he possesses are with few exceptions much less important, either singly or collectively, than is the power to veto the acts of the council. In a few cases this power has been one of the important means by which the charter makers have sought to establish responsible organs of legislation; almost everywhere it has been recognized as a desirable feature.<sup>50</sup> Despite the attacks made upon it the veto power appears to be thoroly intrenched in the municipal constitution of the mayor type, a type which continues to seek good government thru the creation of executives who are dominant both in legislation and in administration.

#### EXTRA-LEGAL INFLUENCE

The legal powers which are bestowed upon the mayor in regard to municipal legislation are by no means the sole measure of his influence in this field. Indeed, it may often be doubted whether they constitute the most important factor in determining his position. His personal influence, his standing in his party, the patronage which he controls, and his ability to direct public attention to favored measures either thru the press or thru pamphlets and addresses are sources of extra-legal power that are not only difficult to define but are incapable of accurate measurement as to their potency in operation. Yet it is well recognized that the power and influence which flow from these sources not only determine the character of city government during any given mayoral term, but frequently override entirely, now for good and now for ill, the ordinary legal provisions laid down in municipal charter and state law.

lutions and orders of the city council should require the affirmative approval of the mayor." Cf. The Finance Commission of Boston, *Reports and Communications*, Vol. II, p. 244. Dated January 29, 1909.

By an act of November 10, 1908, the mayor of Boston is also given a veto power over all appropriations and votes of the board of aldermen, acting as county commissioners.

<sup>50</sup> Except in commission or city manager governed municipalities. As a rule commission charters do not recognize the veto power; tho there are a few that do. The absence of the mayor's veto has been pronounced "not the least among the merits of the commission plan" by Dr. Munro. Cf. *The Government of American Cities*, p. 226.

The personal influence of the mayor in legislation rests upon numerous personal qualities which will be discussed in the chapter on the personality of the municipal executive. It is pertinent to observe at this point, however, that to exert any great personal influence in a council a mayor must command the respect of his politically hostile opponents as well as of his immediate supporters and friends, and he must be able to coöperate with those who disagree with him, and to compel their coöperation in return. Not all successful mayors are men who have exercised a commanding personal influence, but for those who are able to do so, men like Josiah Quincy, Carter H. Harrison, Sr., and a few others, the bonds of legal definition offer little restraint.

A factor that is by no means negligible is the standing of the mayor in the party to which he belongs, for the party is the agency thru which the people determine and carry out the policies of government. Recognized leadership in party affairs is almost indispensable to the successful mayor. Past loyalty and service, flavored with a touch of independence in judgment and action make a strong partisan appeal even where leadership is not undisputed as in the career of the late William J. Gaynor. Even fusion and independent mayors seriously endanger their legislative programs when they ignore the parties which put them into office. Indeed the success of many mayors has been possible because of their dominating position in their respective parties and their common sense recognition of the value of party organization and support.<sup>51</sup>

When one discusses the use of the mayor's patronage to control local legislation it becomes necessary to deal with the more or less hidden, tho generally acknowledged, workings of the machinery of legislation. The temptation to which the mayor yields is strong and pressing. Mayors are, as a rule, elected not as chief executives, but "because of advocacy of some particular legislative policy" and with little or no attention to their capacity as administrators. To secure the legislation to which the mayor is pledged becomes imperative. Small wonder that the interests of sound administration are sacrificed to achieve that end and that the mayor trades patronage for the votes of recalcitrant councilmen. Nor is this power utilized only to secure legislation; it is

<sup>51</sup> The administrations of Mayor Mitchel and Mayor Blankenburg furnish instructive contrasts in this particular.

also employed to forestall and block the acts and plans of the council. An example is afforded by the fate of a proposed investigation by the council of school finances in Chicago in 1916, an investigation to which the mayor was opposed. So successful was he that Alderman Robert M. Buck remarked: "If the mayor can throttle or buy enough councilmen with his patronage the investigation of school finances will never be properly made. We found out just which Republican and Democratic aldermen the mayor had bought with patronage or hopes of patronage."<sup>52</sup>

The mayor's power of appeal to the public thru the press and pamphlet literature as well as by speeches is often employed to influence pending legislation or to bring public opinion to bear upon members of the municipal council. Thru the daily papers the mayor is able to speak as frequently as he may choose to the reading public of the city, and because of his control of many news sources he is able to make sure that his views and the data which he presents will receive space even in opposition newspapers. Doubtless there are exceptional cases in which the mayor is unable to command a hearing or is subject to deliberate misrepresentation, but the importance of his power and influence over the news service usually is not to be denied.<sup>53</sup> The use of pamphlets is not widespread, yet it is employed on frequent occasions for the purpose of informing the citizens about work actually accomplished, or to prepare the public for the intelligent reception of policies yet to be worked out. One of the most interesting uses of the pamphlet was that employed by Mayor Clifford B. Wilson of Bridgeport, Conn., in 1912. In August of that year he sent a message to the common council reciting "a number of pressing needs and improvements" and suggesting a special election at which the voters should be permitted to determine the fate of the proposals made. The carrying out of the plan in-

<sup>52</sup> Cf. *Chicago Sunday Tribune* of July 4, 1915. American municipal history is not wanting in many flagrant cases in which the mayor's patronage was made to serve his legislative program.

<sup>53</sup> In a pamphlet issued on May 10, 1909, and entitled *What Should New York's next Mayor Do?* the Bureau of Municipal Research specifies among other things the systematizing of the city's news service for the purpose of enabling the press to obtain authentic statements of facts regarding important proposals. The cases in which the mayor is misrepresented deliberately appear to be more frequent than those in which he is denied a hearing. The news value of his acts takes care of abuses of the latter sort.



volved in some cases the issuing of bonds for the financing of sewer systems, bridges, and parks proposed, and the alteration of certain administrative features thru charter amendments. The election was duly called and Mayor Wilson in order "to set before the voter a few facts concerning each proposition" in order "that he may vote intelligently" published a ten-page pamphlet that was free from partisan appeal explaining the projects and charter changes. Its author characterized it as "an experiment to get an intelligent expression from the people themselves, based on a complete knowledge of the facts."<sup>54</sup> It is a fact, however, that mayors have not, as a rule, employed their opportunities for publicity either with skill or effectiveness. They are prone to follow rather than lead and create public opinion, or such publicity as is sought is tainted with partisan or personal objectives and lacks that candid and full presentation of facts that alone can command respect and support.

The reference above to the mayor's interest in the fate of charter amendments brings up the question of the power and influence of the municipal executive in the framing and enactment of charters. In general it may be said that while the mayor frequently takes a leading part in the initiation of charter revisions his influence in charter conventions is not conspicuous.<sup>55</sup> There are in some cases opportunities for the exercise of such influence, as in the case of Chicago, where the commissions that have considered charter revision have been appointed by the mayor.<sup>56</sup> Occasionally, as in New York, the mayor has interested himself in promoting the amendment of the municipal charter by legislative action.<sup>57</sup> Likewise mayors not infrequently advocate or endorse proposed changes which they believe will serve the public welfare.<sup>58</sup> But it can hardly be maintained that the mayoralty

<sup>54</sup> Cf. *Proposed Charter Amendments and Bond Issues, What They are and What They are For*, by Clifford B. Wilson, Mayor. The pamphlet contained two maps in addition to the reading matter.

<sup>55</sup> Cf. Mayor Fitzgerald's part in the initiation of charter revision in Boston prior to the creation of the Finance Commission. His first proposals along this line failed to get support in the city council.

<sup>56</sup> Both of the Chicago charter commissions since 1900 have been appointed, the second one being named in the closing year of the Harrison regime.

<sup>57</sup> The most notorious instance is that of the "Tammany-Gaynor charter." See *National Municipal Review*.

<sup>58</sup> Endorsements and suggestions are frequently found in mayoral messages.

has had undue influence on the formulation of the charters drafted by commissions and conventions organized for that purpose.

The same conclusions may be reached in regard to the mayor's influence in the work of those boards and commissions that have been given authority to determine public policy along certain lines of municipal activity. The boards of education are conspicuous among those which enjoy large powers of a legislative character. In some cities, notably in New York and Chicago, the board of education is appointed by the mayor.<sup>59</sup> In Detroit the mayor is ex officio a member of the board and has a veto upon its proceedings. Two-thirds of the members elected to the board must support a measure to carry it over the mayor's veto.<sup>60</sup> In other cities, however, no such authority appears to exist. The members of the board of education in New York are specifically excepted from the operation of the removal power of the mayor,<sup>61</sup> the latter appears to be able to influence their decisions thru the selection of members known to be in accord with his views,<sup>62</sup> and thru his influence as a member of the board of estimate and apportionment, which is charged with the authority to receive the school budget and to act upon the same prior to its submission to the aldermen. The board must also submit certain reports to the mayor, including an annual report. With these exceptions and others of less importance the mayor may be said

<sup>59</sup> Cf. New York, Charter, Sec. 1061. It cannot be doubted that this power of appointment enables the mayor to exercise an important influence upon the educational policy of a great city, even tho no subsequent interference by the mayor be recognized.

<sup>60</sup> Detroit, Charter, Sec. 617. No pocket veto is recognized. The Detroit board of education is elective.

<sup>61</sup> New York, Charter, Secs. 95, 1096. The latter section permits the mayor to remove upon proof of official misconduct etc., the removal to be preceded by notice to the incumbent and a hearing upon the charges preferred. In Chicago the authority of the mayor to interfere thru the exercise of his power of removal is recognized. Thus Mayor Harrison interfered in 1914 in behalf of Mrs. Young, the superintendent of schools and prevented her being dismissed by the board.

<sup>62</sup> Mayor Mitchel is credited with having "assumed the right to counsel with the members of the board of education respecting policies initiated by them." He assisted in an investigation which resulted in notable developments in school policy, particularly in vocational education and the trial of the so-called Gary plan. See, *Mayor Mitchel's Administration of the City of New York*, by Henry Bruère in the *National Municipal Review*, Vol. V, pp. 24-37, especially pp. 32-34.

to have little immediate power over education, owing to the prevailing American practice of separating this function from other municipal activities.

In municipal finance a new body has appeared to absorb power from the city council and to augment the power of the mayor, viz., the board of estimate and apportionment. In New York "it in very large measure makes the policy of the city."<sup>63</sup> In somewhat less power it has appeared in many other cities—"a new organism imposed upon the old."<sup>64</sup> The mayor invariably retains a place upon it and may thus be expected to influence very largely its decisions. That it will become a permanent feature of municipal organization does not, however, appear to be probable, except in some large municipalities retaining the mayor system. In Boston, indeed, the mayor appears to have absorbed the functions which the boards of estimate and apportionment perform in cities other than New York.

#### STATE LEGISLATION

The relation of the mayor to state legislation affecting cities has found legal definition in but one state, viz., New York, and in this case it is negative in character, consisting of a suspensive veto upon special city laws. But in all the states in which there

<sup>63</sup> See article by Mr. Mitchel in the *Proceedings of the Academy of Political Science*, etc. on "The Office of Mayor." Vol. V, p. 4. Mr. Mitchel explains as follows: "By that I mean that it determines such broad questions as the construction of our rapid transit system, and the terms and conditions on which that system should be constructed and operated. It determines the plan upon which our port is to be developed. It authorizes the institution of the various portions of that plan. It determines the financial policy of the city, as it did recently when by resolution it declared the institution of a new plan for financing permanent public improvements of a non-revenue-producing class, and said improvements of that kind should hereafter be financed in increasing proportions out of the tax budget of the city of New York, instead of thru the issue of fifty year bonds. All these duties that board performs, and I can assure you that it is about as busy a deliberative body as sits anywhere in this country or elsewhere. . . . In a great many instances public debate is had. . . . In addition the Board of Estimate has created under this administration a series of standing committees to determine questions of policy and the preparations of great construction plans."

<sup>64</sup> Cf. Charters of Baltimore, Rochester, and St. Louis, tho in none of these has the board developed such powers as it enjoys in New York.

are metropolitan cities the mayor must assume the more positive rôle of a special leader in behalf of the interests of the city which he represents. In this capacity he heads delegations of city officials in their conferences with important legislative committees, and assists in the organization and presentation of the city's case. The effectiveness of his endeavors depends upon a great many elements other than the merits of the case which he presents. The coöperation of the city's representatives in the legislature is not always forthcoming owing to want of harmony on the legislative program within the city itself. Party factionalism and jealousy between the rural and urban constituencies are important factors. But on the whole it can be affirmed that "many vicious and unwise bills" affecting cities would never be enacted and "fewer desirable bills" would "fail" if all available facts and data were "adequately presented."<sup>65</sup> The obligation to undertake this presentation undoubtedly rests upon the mayors of many large cities today. It has been expressly insisted upon in mayoralty campaigns in New York City and has been prominent among the tasks which candidates for the office have promised to perform in Chicago and other centers.

The suspensive veto with regard to special city laws is conferred upon the mayor by the constitution of New York state.<sup>66</sup> It is provided that following its passage by both houses of the legislature a special city law shall be transmitted by the house in which it originated to the mayor of the city or cities affected. The mayor shall within fifteen days return the bill to the house from which it was sent, or to the governor, with a certificate stating whether or not the bill has been accepted by the city.<sup>67</sup>

<sup>65</sup> Cf. pamphlet issued by New York Bureau of Municipal Research, under date of May 10, 1909, entitled *What Should New York's next Mayor Do?* p. 7, par. No. 18 under what are specified as "Some of the Things New York's Next Mayor Must Do." It should be said the record of the Mitchell administration supports the contention set forth in this paragraph.

<sup>66</sup> See Constitution of New York, Art. 12, Sec. 2. This provision was retained in the constitution drafted and submitted in 1915, but the term "special city law" was more narrowly defined. Cf. "The New York Constitutional Convention" by Charles A. Beard in the *National Municipal Review*, Vol. IV, p. 644 (October, 1915).

<sup>67</sup> The mayor alone acts for the city in cities of the first class, in others the council or a majority of it must concur with him. The state legislature may require the concurrence of the council in cities of the first class also.



In 1900 the state legislature, in pursuance of the directory provisions of the constitution, passed a law providing for a public hearing on such "special city laws," one to be held in each city affected by a bill. In cities of the first class the hearings are held before the mayor, in other cities before the mayor and the legislative body of the city. Provision is made for public notice of the hearing being given thru the press in all cases, and in cities of the third class the mayor is instructed to serve copies of the notice upon each council member either personally or by mail. The mayor is authorized to append to the notice "any explanatory statement" that he "shall deem advisable." It is significant that if the bill is returned without having been accepted, or is not returned within fifteen days, it may be repassed by the assembly by a majority vote. In any case, whether accepted or vetoed and then repassed, the bill is subject to the action of the governor. In its final form the act of the legislature must show in its title whether or not it has been accepted by the city. All expenses incurred in connection with hearings must be borne by the city or cities in which hearings are held.

The retention of the mayoral veto on "specified city laws" in the proposed New York constitution of 1915 indicates that the cities consider it of some value in their struggle against legislation of this type. There are many evidences, however, that the veto is not so effective as the cities might wish it to be. The hearings provided for have tended to be perfunctory in character and productive of little information that would guide the mayor or the mayor and municipal legislature in making a decision. The New York campaign of 1909 brot out a demand for a more effective use of the power by the mayor, together with a presentation of the facts which justified a veto or an approval as the case might be. It was contended that proper marshaling of the facts would "largely determine later action by legislature and governor,"<sup>68</sup> tho in the past the mayoral veto had been overridden by the legislature so frequently as to discourage its vigorous use.

See Constitution, Art. 12, Sec. 2 and also Act of 1900, "The General City Law" Art. 2, Sec. 33, cited in Ash, *The Greater New York Charter, etc., with Notes, etc., together with Appendices, etc.* (Third Edition), Appendix 1, pp. 1062, 1063.

<sup>68</sup> *What Should New York's next Mayor Do?* For Mr. Seth Low's opinion of the value of the mayor's veto on special city laws see Bryce, *American Commonwealth*, Vol. I, p. 660, (3rd edition revised). Mr. How-

As a method for protecting the city against special legislation and yet permitting needed action, the veto has but one rival, the provisions found in the constitutions of Illinois and Michigan in which municipalities are permitted by popular vote to accept or reject special legislation.<sup>69</sup> At best the part the mayor can play is exceedingly limited.

In addition to the foregoing the mayor may influence the fate of state legislation thru appeals to the governor to exercise his veto power. Instances of appeals of this sort are, indeed, quite frequent and they offer an excellent opportunity for a summary of the position of the city with respect to pending legislation, particularly special bills affecting municipal interests. The effectiveness of such appeals is not such as to warrant any reliance upon them as a means of protecting the interests of the municipality.<sup>70</sup>

and Lee McBain praises the veto as well worth while and thinks it superior to the Illinois and Ohio practice.

<sup>69</sup> In Illinois this protection is applied to Chicago only, for other cities are protected by a constitutional restriction on the power of the legislature to enact such laws except for Chicago. The Michigan constitution of 1908 contains a general provision for a local referendum on special legislation.

<sup>70</sup> See a letter from Mayor Mitchel to Governor Whitman of New York, dated May 9, 1916, appealing for a veto of fourteen million dollars in the appropriation bills before him on the ground that taxable property in the city of New York bears as great a burden as it can sustain without disaster to the owners. The following excerpts from the appeal show how well the opportunity for presenting the city's case was utilized in this instance:

"Unless you veto at least \$14,000,000 from the state appropriations now awaiting your signature, it is evident that within a year it will be necessary for the State to impose another direct tax. This direct tax will create an additional burden, which, added to the other taxes which New York City must carry, may very easily produce a general collapse of real estate values in New York City.

"The City of New York itself has done everything humanly possible to reduce its own expenditures to an irreducible minimum. The appropriations for the administrative expenses of the City Government are \$2,125,000 less than the corresponding appropriations for 1914. The city now asks that the State Government be as economical as the city itself has been. When last year's appropriations were before you I made the same appeal for the vigorous use of your veto power that I am now making in regard to this year's appropriation. At that time you were unable to agree with my conclusions, but I am emboldened to make the appeal again because, with a wider experience, I feel sure that you have come to realize the justice of the city's position last year."

A summary view of the mayor and legislation reveals a disposition to continue the process of withdrawing the mayor from membership in the council or immediate participation in its work. His relative activity in the work of legislation appears to be increasing, however, owing to the development of his power to recommend measures, to attend council meetings, to introduce administration measures, and to veto nearly all council acts. The tendency to make him the responsible organ of city government in the field of finance has enabled him to gain in power and prestige at the expense of the council. In legislation as well as in administration the mayor is approximating the importance of the old English mayor who was described as "the lord of the city." Of his various powers, that of veto appears to be exercised most effectively for the accomplishment of his purposes; but it is worthy of note that this power has been seriously challenged as unnecessary and undesirable and is rarely retained in any but mayor and council plan charters. The relation of the mayor to state legislation can hardly be pronounced an effective one and no expansion of his legal powers is noticeable along this line. The net results of developments in recent years warrant the conclusion that the mayoralty is both relatively and absolutely more powerful in the field of legislation than ever before.

## CHAPTER VI

### THE MAYOR AND POLITICS

Intense partisan activity and strong party organizations have been outstanding features of American political life. Especially has importance been attached to the position and strength of the national party organizations. State and local issues and interests have been subordinated in order to assure the success of the national organizations and to provide the means for their effective maintenance and support during the intervals between campaigns. In this process the municipalities have suffered tremendously. Whatever of honor, reward, and opportunity their offices have held forth for their citizens has been seized by the great national and state organizations for the promotion of the interests and purposes of the latter. The mayoralty, with its power and influence, has been no exception to the rule. Times without number it has been sacrificed upon the altar of national party loyalty.

This tendency to exalt general at the expense of local political interests is accentuated by the existence of a professional politician class that has consciously emphasized the importance of success for the national and state organizations. The members of this class look to their political activities to furnish them a livelihood. They are in politics "for what there is in it." The opportunity offered them by the modern city and its government has been unparalleled in former generations. It is a field that can be most successfully exploited when the interest of the municipal citizens is centered upon other than municipal problems. The absence of tradition in local politics, the transient character of much of the urban population, the indifference of large portions of the population due to preoccupation in industrial and commercial enterprises, all supplement the efforts of the professional politician to magnify other than local programs and



issues, or to exhaust political energies in vain and unprofitable sham battles.

Even when the urban electorates have been aroused to the importance of municipal politics and have undertaken to discriminate between local and general issues and to analyze the former with a view to the adoption of intelligent policy and the introduction of efficient administration their efforts have been largely neutralized. The municipality has not been free to defend itself from state interference. The state has often been only too willing to assume an active hand in local affairs, even to the extent of ripper legislation. The necessity of having local patronage with which to reward branches of state and national political organizations has led both to flagrant negation of the expressed will of municipal electorates, and to the imposition upon them of burdens which serve no local good. The city has been the victim of unrefined political conditions and of a political philosophy that defines success only in terms of victory at the polls, the assumption of the chief offices of government, and the seizure of the major portion of the positions in the civil service. Failure on the part of local party organizations to retain their hold on municipal governments not infrequently resulted in state authority being invoked to thwart the will of the local electorate.

The worst conditions have arisen when powerful private interests have sought to intrench themselves in richly productive public utilities, an end that could most easily be achieved thru an alliance with local political organizations. The result has usually been the establishment of a bipartisan regime, in which professional politicians of all parties and predatory privilege leagued to promote their respective interests irrespective of the public welfare. It is quite obvious that under such conditions the control of the municipal executive was an objective of primary importance.

The mayoralty has reflected the political conditions in which it has developed. The mayors of important urban centers have usually been party men, at least in the sense that they have been affiliated with a local branch of some national party organization. They have been elected by party men, who cast their votes "for a mayor, who if he were elected President would do this thing or that thing with reference to national expansion or the cur-

rency question or something of that sort; . . .” It remained possible for him to develop a local party leadership that would be sensible of its responsibilities to the community it served and possessed of sufficient influence and power to prevent the wholesale and wanton subordination of municipal interests to partisan or private self-seeking. It was much easier, however, for him to become the pliant tool of those aggressive forces that are in politics for mercenary purposes. Probably no program of local policy had been projected in the campaign for his election. He had cautiously refused to commit himself to definite lines of action on local issues. Having been chosen out of concern for some national or state policy to the realization of which he could contribute little or nothing he remained largely free to give “the street car company or the gas company a new franchise.” In this fashion the loyal party voter who supported him “has foolishly bartered away his own rights, and his neighbor’s rights and his children’s rights for half a century. He thought, perhaps, he was voting for Lincoln or Jefferson, but in reality he was voting for some contractor or for some political boss or for some public service corporation.”

There is generally a certain point, however, beyond which the national and state political organizations may not safely disregard the interests of local communities. Parties and politicians desire above all else to retain their lease on office and power and are therefore to some degree, more or less vaguely defined, responsible to the manifest will of the local electorate. The mayoralty because of its conspicuous position in the scheme of local government is among the first of the organs of the municipality to feel the pressure of public opinion and because of its centralized authority is the least likely among those organs to offer a successful resistance. It has been frequently true that mayors who have been chosen as machine candidates and for given partisan purposes have broken with their backers when confronted with a wave of public sentiment that was determined in character. The action of Mayor John Weaver of Philadelphia, in breaking with the Republican organization by dismissing from office two of his directors and opposing the proposed gas steal, is a conspicuous illustration of the fact that the mayor is so positioned that he is inevitably sensitive to public thought and

feeling.<sup>2</sup> Like independence and responsiveness were exhibited by Mayor McClellan in insisting upon non-partisan appointments to membership on the New York City water supply board, even when the state assembly at the behest of party interest had made partisan nominations possible; by Mayor James N. Adam of the city of Buffalo who kept in touch with his party, yet was so largely independent of it as to make possible an honest, economical, clean, and efficient administration. The number of illustrations might be multiplied many times from the records that are accessible and doubtless there are very many examples that have never had more than local publicity.

The determination of political parties to control municipal politics has led to many notable struggles. In the present century the most flagrant example of the methods to which parties will resort to accomplish this end was the abolition of the mayoralty in Pennsylvania cities in 1901. The party in control of the state had lost many local elections, the mayoral campaign among them. The office of mayor was forthwith abolished by the notorious ripper legislation of that year, and the controller made chief executive in the municipalities. Another and more recent attempt to set up a mayoralty which would be responsive to the desires of the party in control of the state was embodied in the Tammany-Gaynor charter proposed for New York in 1911. The charter conferred great power upon the mayor, probably with the view of serving temporary ends. Among other things it would have given the mayor a substantial and somewhat irresponsible control over the city's budget. The proposal was defeated by the fortunate circumstance that the city had within it public spirited organizations that were able to voice their protests quickly, persistently, and to stir up behind them a wave of public protest.<sup>3</sup>

In pursuit of their objectives party organizations do not hesitate to "knife" independent or doubtful candidates of their own. The defeat of Mayor Fagan in Jersey City in 1907 was the result of party treachery rather than a popular repudiation of his efforts and independence during his administration. The more recent careers of Mayor Hunt in Cincinnati and Mayor

<sup>2</sup> See address by Mr. White, "The Revolution in Philadelphia" in Atlantic City Conference for Good Government, *Proceedings*, p. 136.

<sup>3</sup> Cf. account in the *National Municipal Review*, I, p. 67.

Blankenburg in Philadelphia testify to the tendency of even the so-called reform parties and fusion organizations to turn and rend those who will not serve them.<sup>4</sup> A mayor in his constructive work must watch the wiles of those who because of his independence will stop at nothing to discredit his efforts, to bring him into conflict with other state or local authorities under their control, or to "put him in a hole" in the execution of his own program. In the case of Mayor Dempsey of Cincinnati, in 1906, the ingenuity of local politicians and antagonists was exhausted in the conflict, and the controversy with the governor of the state further imperiled municipal reform. A striking example of a mayor being compelled to veto a portion of his own election promises is that of Mayor Blankenburg of Philadelphia, who was forced into the position of vetoing eighty cent gas, a thing he had expressly pledged himself to secure. An opposition council had outmaneuvered him and had rendered possible the cheaper rate but on conditions which he could not approve.

There are few instances on record in which mayors have successfully defied their party and been reelected. Sometimes, however, this failure to secure a second term has been due primarily to other causes than party defection. A conspicuous example is found in the career of Mayor Timanus of Baltimore, who established a gratifying record for independence. He refused to countenance spoils, yet won the respect and support of his own party, and was renominated. His opponent, however, was a man of good character able to command the normal majority of the opposition party and won the election. There was no evidence of considerable defection within the ranks of Mr. Timanus' former supporters.

Among other causes none, perhaps, has been more potent than the principle of rotation in office. As Professor A. B. Hart observes, "Cities seldom permit anyone to serve more than . . . four years . . . in the mayoralty. Rotation in office pushes a man out just as he is becoming a real force."<sup>5</sup> To this there are, of course, many exceptions, but the mere inspection of the lists of "former mayors" and other municipal officials which

<sup>4</sup> See the Providence Conference on Good City Government, *Proceedings*, p. 107 (1907) for the mention of the defeat of Mayor Fagan.

<sup>5</sup> Address at the Providence Conference of Good City Government, *Proceedings*, p. 70 (1907).



some cities publish in connection with their manuals or reports confirms the statement. It should be observed, of course, that municipal executives in this country have been drawn from the ranks of a busy citizenship and that quite often men feel impelled to give up their public duties after a few years in office in order to attend to their own business interests. In some cities, too, mayors may not succeed themselves and this of course augments the number of changes. In other cases men tire of the struggle which the mayoralty involves and return to private life at the first opportunity.

In their efforts to gain control of the mayoralty with its appointive power, parties and candidates do not hesitate to use the most deceptive slogans as campaign bait. National party loyalty is appealed to, not only in large cities like Philadelphia and Chicago, but in very many of the smaller municipalities.<sup>6</sup> Opposition candidates are usually dubbed "socialistic" if they have exhibited the slightest disposition to question the demands which vested interests have made upon them, and the description is one that has been peculiarly effective with conservative American electorates. On the other hand known conservatism invites the charge of being "capitalistic," and the consequent suspicion of the labor and radical groups of the voters. Frequently such aggressive slogans as "Get Busy," "A Business Administration," "Home Rule," and "Prosperity" are employed to rally support and conceal from the elector the true purpose of the spoilsman. A "Get Busy" campaign waged in Philadelphia in 1907 seems to have had particular reference to the task of circumventing the civil service law of 1906 and of providing places for those "martyrs" who had lost out in the upheaval of 1905. The Busse campaign in Chicago in 1907 was typical of one conducted on a "Business Platform." Mr. Busse frankly recognized the evil constituents of his party, saying, "No man can win in politics with the help of the good alone. All elements are necessary to success." In the Chicago mayoralty contest of 1915 there were many issues, but it was declared while the campaign was on that it was to be a division on national party lines and that the Wilson administration was on trial. The election at-

<sup>6</sup> National politics and partisanship played a notoriously large part in the Philadelphia election of 1915. The "tariff" was one of the chief issues in the campaign.

tracted much attention and the attitude of the mayor elect was evidenced in the following statement concerning his victory: "Chicago has spoken to the nation in this overwhelming vote given the Republican candidates today. It means that Illinois and the middle west will swing into the Republican column. The country can get ready for a return of prosperity." The prosperity appears to have fallen chiefly to the lot of the party henchmen who labored for the new mayor. The demoralization of the municipal civil service stands out as one of the most striking undertakings of the victors.

When measures such as the foregoing do not suffice the campaign tends to degenerate into vilification. Candor and fair play are supplanted by malice and vituperation. "Mud-slinging and muckraking take the place of arguments over programs of municipal advance. Abuse, slander, and falsehoods are at a premium and eleventh hour misrepresentations are circulated with cool and calculated effectiveness."<sup>7</sup> Sham candidacies to split the independent vote are not uncommon, and seldom fail to lead astray some of the unsophisticated. In short, all the devices known to the political game are so frequently called into use in struggles for the mayoralty that cases of gross and flagrant corruption stain the election annals of every important American city. Frequently, the worst offenders are either organized under the banners of a national political party or are closely affiliated with one.

With the mayoralty looked upon as a legitimate and desirable prize in the warfare between the two great political parties of the nation, and the consequent tendency to reduce the independence of the municipal executive by making him subservient to party interests, it is small wonder that mayors frequently put forth strenuous efforts to dominate the life and organization of political parties. Occasionally a mayor with strong and vigorous personality and gifted with political sagacity will succeed in controlling not only local party activities and interests but in wielding a powerful influence in the party life of the state. There are,

<sup>7</sup> Striking examples of such methods are found in some of the campaigns of Carter H. Harrison, Sr., of Chicago, Tom L. Johnson of Cleveland, and "Golden Rule" Jones of Toledo. See Abbot, W. J., *Carter Henry Harrison, A Memoir*, pp. 124-126; Lorenz, Carl, *Tom L. Johnson, Mayor of Cleveland*, p. 24; Whitlock, Brand, *Forty Years of It*, pp. 130, 131.

of course, many more who fail than there are those who succeed. It is, indeed, an undertaking in which municipal executives rarely succeed. But it is also one which is inevitably forced upon spirited and ambitious mayors, both in the interest of the community they have been elected to serve and for the preservation of their own independence of action. Such a course is necessary also for the man who aspires to state or national political honors. The struggle for partisan advantage is so keen that it becomes a question of the mayor controlling the party or the party controlling the mayor. This condition is likely to be aggravated in states in proportion as home rule is not recognized.

Municipal history has produced many mayors who have succeeded in achieving control of the local party organization, but fewer have been able to exercise effective leadership in state politics. Men like Carter H. Harrison, Sr., of Chicago, Mayor James Dahlman of Omaha, and Tom L. Johnson of Cleveland, have not hesitated to push the organization of their own party control, even a reformer like Mr. Johnson not hesitating to go to questionable limits in order to assure himself that his policies and decisions would be registered in law.<sup>8</sup> Both Mayor Dahlman and Mayor Johnson played an active part in state politics and sought at one time or another to dominate them. The close relation between the city of Chicago and the political activities of Illinois has always tended to draw the mayor of the former into the arena of state politics. Mayors Dunne, Busse, Harrison, Jr., and Thompson have all figured with prominence in the direction of their respective parties in the state. The temptation to build up personal machines in order to render this party control stable and effective has been one of the curses of municipal government. It tends to debauch the administration by giving more or less free rein to spoils appointments; it paralyzes municipal councils as organs for the discussion of public policies and often reduces them to the position of mere vehicles for recording the executive will;<sup>9</sup> even in the case of well meaning men it eventually produces astigmatism of the executive vision, as they confuse personal success with the public good; it invariably subordinates

<sup>8</sup> Cf. the Report of the Municipal Association of Cleveland, a non-partisan organization. Citation in the *Proceedings of the Providence Conference on Good City Government* (1907), pp. 113, 114.

<sup>9</sup> *Ibid.* Cf. also, Lorenz, *Tom L. Johnson*, pp. 89-112.

local policies and issues to the considerations of expediency presented by the political situation at large; and in actual campaigns it tends to submerge the importance of selecting good councilmen in the tide of popular interest and absorption in the selection of the mayor.<sup>10</sup>

On the other hand the mayor of the average American city cannot leave the political situation either local or general out of consideration in any of his more important undertakings. Doubtless this is due in part to the political character of the mayoralty and the necessity of obtaining support thru political parties. Opponents of the mayor system and advocates of the controlled executive plan have been quick to seize upon the mayor's necessary participation in political life as the chief menace to administrative efficiency. Undeniably this is the weakest point in the mayor plan. Political expediency demands and receives consideration at the expense of quality in service rendered. But the weakness is not without its compensating advantage, and the vast influence which a popularly chosen mayor, the acknowledged leader of the political life of a community, may have upon public policy is not to be lightly cast aside for the divided counsels of a municipal legislature selected by crude methods of securing representation and commanding a somewhat colorless expert service in administration. Indeed, the emancipation of the city from the domination of state and national political parties and issues has probably been hastened by the leadership of strong mayors.<sup>11</sup> Few believe that the mayor plan even where most perfectly developed and most satisfactorily operated represents the last word in municipal organization. But it has represented a distinct advance, it has contributed richly to the improvement of American city government, and it has cultivated that inde-

<sup>10</sup> The records of the Municipal Voter's League of Chicago indicate how much more successful is the effort to secure good councilmen in years when there is not also a campaign on for the election of mayor. The editorials and cartoons of the Chicago press during the 1915 campaign were continually seeking to remind the elector that the councilmanic election must not be lost sight of in the attention paid to the struggle for the mayoralty.

<sup>11</sup> Cf. the address of William Dudley Foulke, retiring president of the National Municipal League, delivered at Dayton, Ohio, November 17, 1915, and published in the *National Municipal Review*, Vol. V, p. 12, under the title "Coming of Age. Municipal Progress in Twenty-one Years," especially p. 15.



pendence in the electorate which will enable the achievement of higher standards in administration and hasten the reduction of partisan and political considerations to the minimum.

Evidence of the independence of the electorate with regard to the mayoralty has been steadily accumulating. Some very striking examples are at hand. Mr. James Dempsey was elected mayor of Cincinnati in 1905 in a campaign noteworthy for the independent stand of Mr. W. H. Taft against the partisan machine dominated by Boss Cox. Independent appointments followed and the education of the electorate began. The fact that reform in administration had a comparatively poor chance owing to the hostility of the council did not prevent the utilization of the meager opportunity that was presented. The leadership of Mr. Taft came while he was a member of the national administration during Mr. Roosevelt's second administration. Doubtless it encouraged to the point of action many voters who were thinking along independent lines. The reform administration of Mayor Hunt was possible only because of these earlier influences which tended to "free" the elector in Cincinnati. Brand Whitlock's career in Toledo followed close upon that of "Golden Rule" Jones, and produced an intelligent response that resulted in a sympathetic council. Tom L. Johnson's repeated success in Cleveland was due not only to his political skill within his own party but to the cultivated independence of voters in the opposite party who approved his conduct and policies in local affairs.

At one time it was remarked that it had become almost a custom in Providence to choose a mayor from the opposite party than that to which the council belonged, a condition which did not contribute greatly to harmony in the city government, but which justified itself under the enlightened leadership of Mayor McCarthy. Mr. McCarthy sought the counsel of groups of able and prominent citizens in making up his nominations for appointment and his suggestions to the city council, thus throwing a burden of proof upon that body which they could not lightly escape when they refused to confirm his nominees or adopt his proposals. It was easier to get a Blankenburg administration in Philadelphia because of the "revolution" of the first decade of the century. The Mitchel regime in New York is the product of an independence in spirit and action that has been fostered appreciably by so-called Tammany mayors as well as by fusion

and independent incumbents of the office. The independence of Mayor Gaynor was frequently the occasion of comment, tho he was himself a member of the Tammany society and was elected on a party ticket. Of course this independence was not always in evidence, but "the recent Tammany mayors of New York, McClellan and Gaynor, were very much better men than the earlier ones such as Van Wyck or Grant."

Nor are these examples furnished by larger communities alone; they are becoming increasingly common in the smaller cities. The case of the city of Lapeer, Michigan, is rather unusual, but indicates the trend in many small communities. The majority of the electors in Lapeer are Protestants, yet in 1912 they elected a Roman Catholic priest, Father Dunnigan, as mayor, owing to his attitude toward the liquor problem and despite the fact that he thereby became a member *ex officio* of the school board. In almost every case the mayors are found in the lead, even under circumstances in which they owe their election to the very lack of independence which was formerly so common in municipal politics.

Altho undoubted gains have been made in the character and independence of municipal politics, stability is far from assured. The independence of the elector is fitful, originating sometimes in temporary disgust, a desire to chasten, or in reliance upon the promises of the reform leaders. At times the old fealty reasserts itself, or the reform movement has struck closer home than was anticipated, or has failed to do all that it promised to do — at any rate periods of reaction are frequent and make up many chapters even in recent municipal history. Often it appears that independence and struggle have been futile and that no results are evidenced by the shift to the candidate of the opposition. In other cases it is much easier to push forward the tide of reform than it is to maintain it. Political habits are not easily changed. Yet in the reactions which follow strong mayors and reform administrations, and despite many pyrrhic victories of independent movements, the city rarely slips back into conditions as bad as they were before, nor the elector into the smug complacency or preoccupation which characterized him before once being aroused. At times there may be little choice among the candidates set before the voter and the election returns may hide the record of a brave tho unavailing struggle, or a dignified

and considered refusal to choose.<sup>12</sup> Over a period of years, however, the evidences of progress are unmistakable. To this result independent mayors have not failed to contribute.

The opportunities which are opened up in the field of political activity by the increasing position of the mayor in American cities are vast and numerous. The clash of economic and social interests, the battles of industrial warfare, and the rising consciousness of community interest in the outcome of these struggles all tend to elevate the mayoralty in authority and influence. Frequently, it is true, municipal executives fail to realize their opportunity to deal with situations that are ominous and threatening, or more often merely annoying and unsatisfactory. But the number of mayors who will interfere to settle a threatened tie-up of local transportation due to the strike of the employees or the bulldozing attitude of magnates in a traction controversy, or who will attack the problems of unemployment, poor housing, public extravagance, and petty graft, is already large and growing. State associations of mayors are studying these and other municipal problems; a national gathering of mayors has considered the questions presented by public utilities; while many chief executives have seized upon chances to champion measures that will promote sound social organization and insure efficiency. Whether politics be considered as the process of getting into and retaining public office, or be viewed in the larger sense of developing, establishing, and maintaining a just and responsible organization of society, such action is more and more recognized as good politics. Mayor Mitchel's efforts to cope with unemployment in New York City in 1915; Mayor Thompson's settlement of the traction strike in Chicago in the same year; and Detroit's prompt organization of motor bus facilities for transportation in reply to the traction companies who threatened to cease operation unless their demands for franchise privileges were acceded to; the action of Mayor Henry T. Hunt of Cincinnati in forcing the traction interests of that city to arbitrate the difference with their employees or to face an action for a receivership on the ground that the company's public duty was not being

<sup>12</sup> Such was the case in the Chicago election of 1915. The Independents failed to place a candidate in the primary race when Thompson defeated Judge Olson. Thousands felt there was little to choose between Thompson and his opponent, Mr. Sweitzer.

performed; and many other similar instances illustrate the possibilities of mayoral leadership. The continued growth of the mayoralty will be due no less to the influence and authority of the incumbent in the "good politics" just mentioned than to the ordinary and more obvious political leadership which the office has called forth.

The responsibility which attaches to the mayors of our cities for overcoming the disturbances in municipal government due to the play of national politics or to the pettiness of local differences of opinion has hardly been recognized by them. This responsibility belongs primarily to the mayor as a leader of the majority party, a leader whose business it is to carry out the party program with the least disturbance to the interests and welfare of the municipality. But it also inheres in the office itself. The mayor is something more than a party leader. He is the official head of the municipality; he is the mayor over all its inhabitants. It is his duty to study the things that make for coöperation and for the suppression of irrelevant or inconsequential differences. In speaking of the failure of Mayor Baker, one of Cleveland's most enlightened leaders, to contribute materially to the solution of this pressing problem, Professor C. C. Arbuthnot says: "It behooves the majority in municipalities without surrendering the power that the electors have placed in their hands, to put the minority members into active service, load them with some share of responsibility for the public work, entangle them indeed in the execution of the administration's policies and by sheer force of working together put the minority in a positive relation to the city government. The policy of isolating the group in comparative ineffectiveness draws the partisan line sharper, turns energy that should be constructive into obstructive tactics, sours the milk of common interest and sacrifices matters of local concern to an over emphasized national distinction. The cities will never begin to free themselves from this incubus unless they commence in substance as well as in form.<sup>13</sup> An enlightened majority must start the unloading process."

<sup>13</sup> The changes in form referred to are those which relate to the alteration of the election machinery, especially those which seek to eliminate contests by national parties on other than local issues. Mr. Baker's failure to further the development of this reform is "all the more keenly felt because



In concluding this review of the relation of the mayor to the party and political life of the time it is well to call attention to the fact that the large number of municipal executives who have served as local political leaders have contributed a relatively small proportion of the men who have achieved recognition in the political life of the state and nation. There are some striking exceptions, especially in states like New York and Illinois which include great urban populations.<sup>14</sup> But too often the exigencies of practical politics tend to render the stronger man unacceptable for the municipal service. When this influence is supplemented by the retirement of valuable public servants either voluntarily or thru the tendency to pass offices around, it is not difficult to perceive why the cities do not furnish from among their executives a larger percentage of those prominent in the larger units of government. It would seem to be altogether desirable that men who have experienced as valuable training as the chief magistracy of modern cities affords should not be lost to a people whose higher forms of government have need of the most skilled and trained ability. Fortunately there is encouragement in the number of mayors who have won recognition from state and nation within the past decade.

Mayor Baker has taught many a republican in this city to forget national party affiliations when voting for himself as city solicitor or as mayor." *National Municipal Review*, Vol. V, pp. 235, 236.

<sup>14</sup> Grover Cleveland served as mayor of Buffalo, governor of New York state, and President of the United States. Governor Dunne of Illinois had already served as mayor of Chicago; Secretary of War Baker served two terms as mayor of Cleveland; David R. Francis, ambassador to Russia, served as mayor of St. Louis; Brand Whitlock, minister to Belgium, had been mayor of Toledo; and there have doubtless been a number of others.

## CHAPTER VII

### THE PERSONALITY OF THE MAYOR

Ten years ago a prominent student of municipal government made the statement that "tho there have been plenty of notable governors there is hardly a man in the country who has made a national, or even a state reputation as a highly successful mayor of a city."<sup>1</sup> In the intervening years there have been a number of men who have been known within their respective states for their success in the mayor's office and some who have been known thruout the nation for the same reason. The majority, however, may never hope to achieve fame of more than local scope, not because their work might not merit broader recognition, but because of other conditions over which they have no control. The facilities for extending a mayor's reputation were not so well organized ten years ago as they are now. The formation of state and national mayors' associations, of municipal leagues, the publication of many journals devoted to the municipal field either local, state, or national, or to some particular phase of municipal government, the rising interest in municipal affairs and systems of organization, and the striking advance in the betterment of administration have served to give successful mayors an opportunity to achieve more than local recognition. Moreover, there has been created during the past quarter of a century a constituency which is primarily interested in learning of successes which are worthy, and which keeps abreast of municipal affairs in the more important cities and states, if not in the nation as a whole. It must be remembered also that many able mayors have not been men with political ambitions that would lead them to seek the advertisement and public acclaim essential to the establishment of a so-called reputation. Municipal executives have not infrequently been men called from private life for a few years

<sup>1</sup> Address before the Providence Conference on Good City Government; see *Proceedings*, p. 69 (1907).

of public service; then quietly reabsorbed into the body politic as one of the mass. The means by which many of our well-known public men have come to the front and the rewards which success achieved in this way offers have not attracted the attention of individuals whose ambition lies in other channels. Equally true, too, is the fact that the importance of the mayoralty as a position in the public employ and as a channel thru which to serve the public has been quite generally underrated when compared with state and federal positions. The short term which formerly obtained generally gave only a few men a tenure sufficient to attain more than local prominence. Others accounted it a source of quick relief from a very arduous and quite thankless responsibility. On the other hand popular election frequently cut short promising careers in the mayoral office. Want of popular sympathy with municipal programs and broad gauge planning usually gave statesmen small opportunity for leadership, especially where the council continued to retain and exercise considerable power in administration. Many mayors despaired because of the mire of intrigue, petty politics, ward and district squabbles that must be faced and mastered before constructive movements could begin. These conditions have not been abolished today, but very marked improvements have taken place and the mayoralty is tending to attract a distinctly abler class of individuals into the public service. This tendency will increase in proportion as the conditions in municipal government improve and as the mayor plan feels the impact of other types of executive organization.

No history and description of the mayor's office is adequate that overlooks the personality of the incumbent. There have been mayors who like some accomplished actors "take a small part and make of it a great one." The opportunity to play the part with distinction comes to almost every mayor; it may be offered in the chance to clean up corrupt and vicious practices in city government, it may come in a conflict with outside forces that seek to dominate the city's life and welfare, it may come in struggles to define and direct municipal programs of action, or it may appear in the ever present problem of interpreting the ordinary powers and duties of the office. The mayoralty has felt the personality of great men in every one of these lines, and in others. Whatever other factors may contribute to the impor-

tance of the office in the municipal field it owes much to those individuals who have left the impress of their own personality upon its development. To portray that obligation fully would require too extended a treatment, but a survey of the more important personalities of the past two decades will indicate its extent. In earlier years one may mention such remarkable mayors as Josiah Quincy of Boston, in many respects the most forceful character in the history of the office, Mr. Abram S. Hewitt in New York, and Mr. Carter Harrison, Sr., of Chicago, who not only made a name for himself but cast such a spell over the electors in his city that a less forceful son has been able to exercise a predominate influence in Chicago during the greater part of the present century, he himself being mayor for twelve years.<sup>2</sup>

The record of the mayoralty in the twentieth century inspires new hope and establishes hopes already aroused with regard to the future of city government in the United States. No index to this record is more significant than the personalities of the men who have held the office during these years. It is true there have been men of the type of Eugene Schmitz of San Francisco and "Doc" Ames of Minneapolis, men whose administrations were malodorous with corruption and inefficiency,<sup>3</sup> and who have faced trials for misconduct or who have become fugitives from justice. One can also turn to the careers of the great majority to find their work fairly honest, tho often characterized by mediocrity, want of notable force and vision, and subject to the conventional methods and demands of practical politics. The record of Carter Harrison, Jr., of Chicago is typical, except in length

<sup>2</sup> For an account of the life of the elder Harrison see a work by Willis John Abbot, *Carter Henry Harrison, A Memoir*, New York, 1895. Accounts of the municipal activities of Mr. Quincy will be found in his *Municipal History*, etc., Boston, 1852, and in the *Memorial History of Boston*, Vol. III. The nature of his public service is indicated in his closing address to the two houses of the council sitting in convention at the end of which he uttered this challenge: "I inquire, as I have a right to inquire . . . Have you found in me anything selfish, anything personal, anything mercenary? In the simple language of the ancient seer, I say: 'Behold here I am; witness against me. Whom have I defrauded? Whom have I oppressed? At whose hands have I received any bribe?'"

<sup>3</sup> The Don Roberts case in 1915 indicates that the worst type of municipal chief executive is not yet extinct.



of service. John F. Fitzgerald of Boston and George B. McClellan of New York also belong to this group. Occasionally too, there appears a mayor who is wanting in the qualities which would bring enduring recognition, but who possesses a picturesque personality and a semi-independence in action that win for him more than local recognition. Before his election it was prophesied of William J. Gaynor that with him as mayor, "New York would not know one dull and uninteresting day." "His picturesque and inscrutable character supplied the basis for much genuine curiosity." "But at least his policies were all his own. Citizens opposed to him were glad to feel that their chief executive was incapable of submitting to crude dictation, that he had reasons or motives for every official act — in short, that he was mayor in fact as well as in name." "His strong and unusual personality will doubtless be remembered by New Yorkers for a longer time and more vividly than will any particular acts and policies of his administration." More frequently the office attracts the type of man quite commonly described as a war horse of reform.

Recent years appear to be evolving a new type of mayor, a type skilled and practiced in the art of municipal administration and devoted to the application of sound principles and methods and the development of sound traditions. It is being justified by its substantial achievements.<sup>4</sup>

One of the most unique personalities that has occupied the mayoral post in this country was Samuel M. Jones, more familiarly known as "Golden Rule Jones," of Toledo. Mr. Jones was considered eccentric. In public and in private life he became a national and an international figure. He tried to practice the golden rule, not in a limited sense but so completely that "every act of his life, no matter how trifling and insignificant it may have seemed, suddenly took on a vast and vital significance." When the golden rule "seemed not to 'work', he would truly say it was only because he didn't know how to work it."<sup>5</sup> In the

<sup>4</sup> Mitchel as mayor of New York serves to illustrate this later type; also Newton D. Baker, recently mayor of Cleveland, a city declared by non-resident students of city government to be the best governed city in the United States, a reputation for which there was considerable basis, at least up until the close of his administration.

<sup>5</sup> For a sympathetic, yet searching portrayal of the career of Mayor

field of municipal government, Mr. Jones, as mayor of Toledo, is credited with two great contributions. In stating these, Mr. Brand Whitlock, a later mayor of the same city and minister to Belgium during the first years of the Great War, says:<sup>6</sup>

"I regard it as Jones' supreme contribution to the thought of his time that, by the mere force of his own original character and personality, he compelled a discussion of fundamental principles of government. Toledo today is a community which has a wider acquaintance with all the abstract principles of social relations than any other city in the land. . . .

"Jones' other great contribution to the science of municipal government was that of non-partisanship in local affairs. That is the way he used to express it; what he meant was that the issues of national politics must not be permitted to intrude themselves into municipal campaigns, and that what divisions there are should be confined to local issues."

Mayor Jones' achievements as mayor differed from those of the ordinary office holder. "There is not a public building which he erected, no reminder of him which the eye can see or the hands touch." Lincoln Steffens remarked of him, "Why, that man's program will take a thousand years." Nevertheless, his attitude toward public service franchises, toward the right of society to inflict punishment, toward machine controlled politics, and the rights of property made a distinct impression upon his city. With regard to the problem of the enforcement of law in cities, Jones must be hailed as a major prophet. For the policeman's club, or the rigors of the law as a means of "making people good" he had no use.<sup>7</sup> He believed that only hatred, not love, could appear in the processes of force, and therefore he shunned them. His leniency was the despair of conventional, orthodox, or reforming folk, who opposed him bitterly. Being an independent in politics, he was relentlessly opposed by the organized polit-

Jones see Brand Whitlock's *Forty Years of It*, pp. 112-150. A collection of his letters have also been published by the Bobbs-Merrill Co. of Indianapolis.

<sup>6</sup> *Forty Years of It*, pp. 137, 138.

<sup>7</sup> His position on this subject is probably most lucidly expressed by his fellow worker, and disciple, Mr. Whitlock, in his "Open Letter" addressed to certain "Representatives of the Federation of Churches, Toledo," published in booklet form, Indianapolis, 1913. The letter was written in 1910.

ical forces of the community, especially the Republican party organization. Aided by fellow partisans who controlled the Ohio state legislature a special act was secured which deprived the mayor of Toledo of control over the police force and gave it to the governor of the state operating thru an appointive commission. Jones' determined resistance to this statute resulted in the reversal by the courts of doctrines and precedents long established and the overthrow of "the whole fabric of municipal legislation in the state," opened up the entire question of the status of municipalities in relation to the state, and gave the opportunity for the agitation which resulted in the adoption of a liberal measure of home rule by the constitutional amendments of 1912. Says Mr. Whitlock, "the decision had ultimate far-reaching effects in improving the conditions in Ohio cities, and was the beginning of a conflict that did not end until they were free and autonomous."<sup>8</sup>

Few men have left a more permanent mark upon municipal life and that in this country than Tom L. Johnson of Cleveland. He was among the first to give a practical demonstration of what was meant by clean administration at a time when the movement to purify municipal politics and government was acquiring popularity and momentum.<sup>9</sup> Under him Cleveland became one of the best and most honestly governed cities in America.<sup>10</sup> "To the last Mayor Johnson and his administration marched abreast with the times assimilating and putting into practice the most advanced theories on the governing of a modern city."<sup>11</sup> Cleveland became a source of inspiration for the advocates and friends of clean and honest administration everywhere. Representatives of other cities came to see and to study. Johnson's methods were often new and original, for Cleveland was a sort of laboratory or experiment station as well as a live, going concern.

Even more important than the foregoing was Mr. Johnson's struggle for municipal freedom; freedom from the domination

<sup>8</sup> *Forty Years of It*, p. 137.

<sup>9</sup> Cf. Carl Lorenz, *Tom L. Johnson, Mayor of Cleveland*, p. 85.

<sup>10</sup> Lincoln Steffens called Johnson "the best mayor of the best governed city in the United States." Cf. *McClure's Magazine*, July, 1905. Also, Lorenz, *Tom L. Johnson*, p. 48, expressed the same opinion.

<sup>11</sup> Lorenz, *Tom L. Johnson*, pp. 49, 50.

of privileged interests and from the restrictions imposed by state law. To do this it was necessary to awaken and educate the Cleveland electorate on the vital problems of the municipality. He succeeded so well "that they overthrew him, when they believed that his usefulness had come to an end. Today the people of Cleveland are perhaps better versed in public affairs than the citizens of any other city of the United States."<sup>12</sup> One observer concludes, "he did perhaps more than any other man in America to make possible the coming of the free city in this land."<sup>13</sup> Another believes that "his struggle for three-cent railway fares in Cleveland, which was but a roundabout method of securing municipal ownership in a state where the legislature in those days would not permit cities to own their public utilities, was his great work."<sup>14</sup>

Whether one accepts the judgment of his friends and supporters or the more moderate views of detached observers one is impressed with the strong personality of Mr. Johnson and the extent to which it pervaded every branch of the administration of which he was the head. Mr. Whitlock pictures it as follows: "I used to like to go over to Cleveland and meet that charming group Johnson had gathered about him. There was in them a spirit I never saw in such fullness elsewhere; they were all working for the city, they thought only of the success of the whole. They had the city sense, a love of their town like that love which undergraduates have for their university, the esprit de corps of the crack regiment." Tho a man with a vision of Cleveland as "a city set on a hill," he was essentially a man of action. Mr. Johnson was aggressive, resourceful, and dissatisfied with aught less than domination in any undertaking in which he was involved. The latter characteristic he once clearly expressed in reply to a proposal from Mark Hanna for a partnership and the consolidation of their interests. Mr. Johnson refused on the ground that he and Hanna were too much alike; that "as associates it would be a question of time, and a short time only until one of us would 'crowd the other clear off the bench.'" <sup>15</sup> His

<sup>12</sup> Lorenz, *Tom L. Johnson*, p. 65.

<sup>13</sup> Whitlock, *Forty Years of It*, p. 174.

<sup>14</sup> *Ibid.*

<sup>15</sup> Tom L. Johnson, *My Story*, New York, 1913, p. 25. This autobiography is not the least among Mr. Johnson's contributions to municipal gov-



love for power and political ambition was mingled with admitted sincerity of purpose and desire to serve the public interest. Selfishness and personal hatred undoubtedly asserted themselves at times during his career but they were the errors of a well meaning, determined leader. There were other apparent contradictions in this great mayor who "liked a straight course and went a crooked way" — at times. In the end the very training and traits of character that made him a valuable and indispensable leader in the terrific struggle his city was making for the privilege of working out its own salvation proved to be his undoing, once victory had been won.<sup>16</sup>

There can be no question of the added significance which Mr. Johnson gave the mayoralty as a result of his incumbency. "The secret of a good executive," he writes in his autobiography, "is this — one who always acts quickly and is sometimes right."<sup>17</sup> He was possessed with what he calls a "civic consciousness" in addition to superior ability and a reputation as a successful business man. He had no use for boodlers nor for many of the ways of practical politics, though his skill in political strife was usually of a high order. But above all else he set a new standard for constant and persevering labor in behalf of the public interest, for fearless and tenacious struggle in its behalf, and developed and exhaustively exploited the powers of the office. The mayoralty had a different meaning in Cleveland when he left it than it had when he entered upon its duties, and the value and importance of this change has not been lost upon other municipal executives.

Two of the remarkable figures that have held the mayoralty since the opening of the present century are Henry T. Hunt of Cincinnati and Rudolph Blankenburg of Philadelphia. Both men were essentially "reform" mayors. The political conditions in the respective cities were somewhat different, but there was little to choose between them as regards the depth of their degradation in this country. It should have a wide reading among municipal officials, many of whom have doubtless profited from its perusal since it was first published in 1911.

<sup>16</sup> Mr. Lorenz's chapter entitled "A Pyrrhic Victory" illuminates this statement. Cf. also Mr. Whitlock, *Forty Years of It*, p. 174.

<sup>17</sup> *My Story*, pp. 121, 122. Mr. Johnson admits many mistakes in his early appointments, for example, cf. pp. 121, 167.

dation. Hunt had his council with him, Blankenburg did not. Both men refused to compromise with their supporters' demands for the spoils of victory and thus alienated many.<sup>18</sup> The failure to take account of "politics" betrayed idealistic tendencies which the municipal electorate was not educated to appreciate and left their reform programs without that cohesive and substantial support which is still usually necessary for victory at the polls. Both were opposed by machine organizations that had been long organized and that were implacable. By their impartial execution of law both men alienated some of those who had been friendly to them. Hunt was charged with having exploited the powers of the office unduly; Blankenburg with failure to exhaust them in the fulfilment of some of his pledges.<sup>19</sup> Their personalities were different in many respects. Hunt was young, and had served in the state legislature and as prosecuting attorney of the county. He was "single-minded, brave, outspoken, able."<sup>20</sup> The leading press of the country joined in praise of his character, ability, faithfulness, judgment, loyalty to public interest, and his progressive attitude toward social betterment.<sup>21</sup> Mr. Blankenburg, on the other hand, had long been associated with the movement for reform in Philadelphia and at the time of its culmination was looked to as "the one man qualified for the task" which the reformers had undertaken.<sup>22</sup> He was a typical "war horse" in agitation, picturesque and severe in his denunciations. He was courageous, enthusiastic, even vehement in his

<sup>18</sup> In both cities the campaigns had been waged on the promise that no wholesale displacement of office holders should take place. The keeping of that promise proved costly in each case. Cf. *National Municipal Review*, Vol. III, pp. 519, 520, for a discussion of the procedure followed by Mr. Hunt, and Vol. V, pp. 213 and 223, for the discussions of the course taken by Mr. Blankenburg.

<sup>19</sup> *Ibid.*, pp. 522, 523 in Vol. III, and 218-220 in Vol. V.

<sup>20</sup> Cf. "Mayor Hunt's Administration in Cincinnati," by A. Julius Freiberg in the *National Municipal Review*, Vol. III, p. 518.

<sup>21</sup> See *Harpers' Weekly*, October 11, 1913; *Boston Transcript*, September 24, 1913; *New York Evening Post*, September 20, 1913; *Chicago Tribune*, October 13, 1913. Extracts from these and other editorial opinions that appeared during the campaign for reelection were published as a part of a pamphlet entitled "An Account of the Administration of Henry T. Hunt and His Associates."

<sup>22</sup> Editorial in the *Philadelphia North American* for January 3, 1916, reproduced in the *National Municipal Review*, Vol. V, pp. 217-222.

temperament, qualities which found motive power in his "innate abhorrence of venality, chicanery and oppressive abuses." He was experienced, however, in public administration. One observer judges his work as follows: "Very few men with such a temperament possess also in large degree the virtues which enter into the making of a successful administrator in an extensive public office elected by the people and involved in active politics. Patience, reticence, a shrewd knowledge of human nature, practical concentration of purpose, a keen perception of public opinion in all its fluctuations and eccentricities, the faculty for ready co-operation with all sorts of men who represent the varied life of the community, and the cool judgment or insight by which the useful man discerns the things which can be done and avoids those which can't be done are among the qualities which are to be found in the mayoralty or any kindred office when it is well and satisfactorily administered. In these respects Mr. Blankenburg has not been strong. But in honesty, in sincerity, in a sense of fidelity to conception of the mayoralty as a trust, in a pure love of the city and in eagerness to serve it to the very best of his ability, there is no man among us to whom he stands second."<sup>23</sup>

Both Mr. Hunt and Mr. Blankenburg appear to have had the faculty of being able to select able subordinates; and to retain their devotion and respect. Of the two Mr. Hunt appears to have been the more practical in his turn of mind, Mr. Blankenburg the more visionary.<sup>24</sup> Hunt was defeated for reelection; Blankenburg was ineligible to succeed himself and his protégé was defeated. Nevertheless each man contributed to the conception of what a mayor should be, and this contribution was a general one. Their administrations attracted wide attention in other cities and their achievements made impossible a complete

<sup>23</sup> Cf. article by William Perrine in the *Philadelphia Evening Bulletin*, December 30, 1915, and published in the *National Municipal Review*, Vol. V, pp. 223, 225.

<sup>24</sup> "It is in the understanding of the underlying principles, and sympathy with the problems of the people, that the mayor (Blankenburg) and his assistants have done their best." One recalls also the "courses" which the mayor and members of his staff took in the University of Wisconsin. The value of Mr. Blankenburg's vision of municipal problems should not be underestimated. The calling of the conference of American mayors to consider "Public Policies as to Municipal Utilities" may prove to be one of the principal achievements of his administration.

return to former conditions in their respective cities. Mr. Blankenburg, by calling the first "Conference of American Mayors" to meet in Philadelphia, November 12-14, 1914, made a distinct contribution to the development of a spirit of professional service in the ranks of municipal executives (a development which it must be recognized is yet in the embryonic stage) and gave new meaning to the halting progress which has often attended the efforts to organize effective associations of municipal executives, or to the work which those already in existence were accomplishing in the various states. Nor did it fail to call the attention of the cities to the fact that fundamentally their public utility problems are very much alike. Mr. Hunt continues to be an active contributor to the understanding and solution of municipal problems in general and in such effort his practical experience and observations are invaluable factors.

Two mayoralities in recent years constitute developments that are little short of epochal, viz., the Baker administrations in Cleveland and the Mitchel regime in New York. Both Newton D. Baker and John Purroy Mitchel were experienced and trained public servants before they were elected mayors. Mr. Baker had been city solicitor while Tom L. Johnson was in power and had made a splendid record for efficient service in that capacity. Upon him fell the mantle of his chief when Cleveland denied to Mr. Johnson continued support.<sup>25</sup>

Mr. Baker was a "scholar in the mayor's office," a man unlikely to renew the "storm and stress" of the Johnson period, yet imbued with devotion to the public interests and equally determined that they should find expression and protection. He faced the "wearing task of constructive and conciliatory upbuilding of the city's interests. The mayor's aptitude for positive achievement fitted him well for the need of the time. He showed a power of adjustment and an ability for negotiation that reduced strained relationships, and sought the equitable way out of conflicts between public and private interests. . . . To draw a parallel between his career and that of the general run of mayors in this country would be provocative of adulation distasteful to a man of his fine fiber. . . . That he will rank in history as

<sup>25</sup> There was an interval of two years between their periods of service, this being the period of Mayor Baehr's term.



one of the few great mayors of American cities is certain."<sup>26</sup> The personal qualities which contributed to his success as mayor were "a splendid intelligence influenced by a wholesome sympathy," a personality that was "radio-active, graciousness, a cultivated taste, and a wide intellectual outlook, united with a catholicity in judgment."<sup>27</sup> Coupled with his political idealism there was an insight into the practical which gave him the appearance, at times, of being an opportunist, especially in his relation to party politics.<sup>28</sup> The contribution of Mayor Baker to the mayoralty lies not merely in the failures or successes of his administration, striving as it did to consummate a worthy municipal program, but is rather to be found in his expression and cherishing of "a civic spirit of extraordinary vitality."<sup>29</sup> He imparted to it elevation, assisted it to consciousness of its powers and possibilities, and gave to it leadership and opportunity. Such achievements are rare among statesmen in American democracy and that they should have been recorded in municipal administration is most significant. Cleveland's example and influence will long encourage recognition and stimulate the development of like leadership in other cities. As for Mr. Baker, it is noteworthy that he found large range for his ability in the office of secretary of war. Indeed it is indicative of the altered character of American municipal administration that the national government is drawing many of its servants from the ranks of those who have served their respective cities well.

While still a young man when chosen mayor of New York City in 1913, Mr. Mitchel brought to the office previous training in the city's service. Under Mayor McClellan he had been commissioner of accounts, and for the four years prior to his election as mayor he had been president of the board of aldermen, a posi-

<sup>26</sup> Cf. article by Prof. C. C. Arbuthnot on "Mayor Baker's Administration in Cleveland," *National Municipal Review*, Vol. V, pp. 226 ff. The above quotation is found on pp. 240, 241. This survey of the Baker administration is appreciative, yet free from partisan exaggeration; critical yet without taint of antagonism. It is a refreshing portrayal of the subject dealt with. Mayor Baker's failures and unfinished tasks are indicated as well as his successes.

<sup>27</sup> *Ibid.*, p. 240.

<sup>28</sup> *Ibid.*, p. 235.

<sup>29</sup> *Ibid.*, pp. 239, 240. Mr. Baker not only helped to draft the Cleveland charter but enjoyed during his two terms as mayor the opportunity of interpreting it.

tion which also made him a member of the board of estimate and apportionment and enabled him to exercise a powerful influence in the determination of municipal policy under Mayor Gaynor. For a short time he had served the national government as collector of the port of New York. Altogether he brought an unusual fund of experience to the office of mayor, a fact that was the more significant inasmuch as he had shown himself loyal to principles of sound administration, viz., economy, efficiency, and fidelity to the public interest. In speaking of the general contribution which Mr. Mitchel's administration has made to municipal government Mr. Henry Bruère says:

"It has given the city a government of a non-partisan character. It has emphasized the professional character of municipal administration by seeking qualified experts for administrative positions. It has brought to the forefront the social welfare aspects of government activity, and given emphatic and continuing emphasis to economy and efficiency.

"The administration has not had presented to it, nor has it created an opportunity for general popular appeal. It has kept itself in the position of recognizing from week to week and month to month the obligation it assumed on entering office to conduct the affairs of the city government with efficiency and to devote the resources of the city exclusively to public welfare."<sup>30</sup>

The personal qualities which enabled Mr. Mitchel to make a distinct success as mayor of the country's metropolis were in keeping with the solid and substantial character of his public service. He was a man of clear perceptions, broad vision, and courage. His insight was demonstrated in the establishment of an executive budget by the exercise of powers which the mayor already possessed. He was skilled in the art of securing effective coöperation, both on the part of subordinates and from those not in the public service. Says Mr. Bruère, "the mayor [Mr. Mitchel] has not stood alone in the traditional isolation of New York's chief executive. He has had the sympathetic and effective coöperation of his fellow members of the board of estimate and apportionment. . . .

<sup>30</sup> *Ibid.*, Vol. V, p. 24. The article by Mr. Bruère from which the quotation is taken is an illuminating discussion of the subject, "Mayor Mitchel's Administration of the City of New York." It covers the first two years of his term.

"I do not recall in any previous administration an equal use of coöperating citizen committees. Committees not only representing all classes of citizens and types of interests have been summoned to assist in the consideration of problems of emergent or continuing character, but, what is of greater consequence, practical results have been obtained from this coöperation. Not only have there been committees appointed by the mayor on such questions as unemployment, markets, ports, terminals and taxes, but various department heads have affiliated with their activities interested groups of citizens to assist them either in developing public interest or providing special experts to help in solving technical questions."<sup>31</sup> Mr. Mitchel impressed the public with his sincerity as well as his ability, and the want of "political pharisaism" did not fail to evoke an enthusiastic response from the public.

It is important, also, that Mr. Mitchel retained the point of view of a true representative of municipal democracy. He said, "Everybody wants to see the mayor and see him personally . . . no matter how trivial the business . . . they feel they must see the mayor. He is called upon to keep the door of his office open to the public, and after all *it is proper that he should*, because the public ought to have direct contact with the mayor; people ought to have access to him, and he must reserve enough time to see the people who come to the office and want to see him." This view contrasts strongly with that of Tom L. Johnson, who advised Mr. Brand Whitlock as follows: "Don't spend too much time in your office. A quarter of an hour each day is generally too long, unless there are a whole lot of letters. Of course," he went on reflectively, "you can get clerks who can sign your name better than you can." Patience, tact, and executive ability of a high order, especially his powers of selection and decision, and undoubted promptness and forcefulness in action, have all aided in making conspicuous Mr. Mitchel's "exceptional success in doing the right thing in the right way both at the outset of his administration and as each successive emergency has arisen."<sup>32</sup>

<sup>31</sup> *Ibid.*, pp. 24, 25. Mr. Bruère contrasts his political sincerity with the customary "political pharisaism" in the city's administration and describes the city's enthusiastic response.

<sup>32</sup> Mr. Johnson is also reported as defining executive ability as follows:

Moreover, one finds in Mr. Mitchel's record evidences of the qualities of initiative and thoroness, both being abundantly demonstrated in his labors in behalf of the city during the sessions of the New York state legislature. Indeed his thoroness in the formulation and presentation of the city's interests made it difficult for "vicious and unwise measures" to be passed, and easier for necessary and desirable measures to secure support. This was especially noticeable in the legislative session of 1916, tho his efforts fell short of being crowned with complete success, particularly his efforts to curb appropriations that would necessitate an increase of taxation in New York City.

It is altogether too early to define in detail Mr. Mitchel's contribution to the mayoralty except as related to New York City. Of one thing, however, those interested in the future of municipal administration may well feel assured, viz., that a new standard has been set for the office in the principal city of the land, and that this standard cannot fail to be felt elsewhere. Mr. Bruère prophesied as follows: "New York's present administration promises to be the climax of a period of progressive, hard-won transition and the beginning of a period of revolutionary change in the government of the city."<sup>33</sup> There can be no question but what the character and position of the office has been strengthened, a result which can hardly fail to be felt in many other cities. It is rather significant, also, that the mayor system has evolved two administrations headed by men who can satisfy the demand for skilled and trained executives just at the moment when the city manager plan appears to lay special emphasis upon the necessity for public servants of that type.

The roll of those who have left their impress upon the mayoralty has by no means been exhausted. One likes to think of the constructive leadership of Mr. Vance McCormick of Harrisburg, Pennsylvania, a leadership conspicuous for pluck, determination, and earnest spirit, and notable results.<sup>34</sup> The initiative and devo-

"It's the simplest thing in the world; decide every question quickly and be right half the time and get somebody who can do the work. That's all there is to executive ability." Brand Whitlock in *Forty Years of It*, p. 207. See also the *National Municipal Review* for the estimate of the success of Mr. Mitchel's administration, Vol. V, p. 24.

<sup>33</sup> *National Municipal Review*, Vol. V, p. 24.

<sup>34</sup> Cf. article on "The Harrisburg Plan: Celebration of a Dozen Years



tion of the Hon. James M. Head as mayor of Nashville, Tennessee, placed that municipality under lasting obligation to him for the modern character of its franchise grants and other forward looking steps.<sup>35</sup> Portland, Maine, recognizes in the mayoral service of James P. Baxter the loyalty and public spirit of "a citizen, who, more than any other man in his generation, has devoted himself in many ways to her [Portland's] welfare," having held the office for six terms.<sup>36</sup> Toledo shares with Belgium the fortune of having known the ability and sympathy of Mr. Brand Whitlock, one who has done much to place the "police problem" and the problem of law enforcement in their proper settings and so to hasten their ultimate solution, a consummation of immediate importance to every municipality. It was his privilege also to have no unimportant part in the campaign which won for constitutional home rule the approval of the Ohio electorate, a fitting climax to eight years of earnest effort in the mayor's chair.<sup>37</sup> Space permits but the mention of the late Seth Low of New York, of Messrs. David I. Jones of Minneapolis, William B. Thompson of Detroit, George F. Cotterill of Seattle, James Rolph of San Francisco, and James N. Adam of Buffalo, to say nothing of executives in smaller cities and with less opportunity to gain wide repute, many of whom have done service in the development and maintenance of the rising standards and traditions of the mayoralty.<sup>38</sup> It should be observed also that men

of Municipal Betterment," by J. Horace McFarland in the *National Municipal Review*, Vol. V, pp. 71 ff. It should be noted that Mr. McFarland himself had the honor to be singled out as the "one man above others who stands out preëminently as a patriot in all these years of improvement campaigns . . ."

<sup>35</sup> *Atlantic City Conference for Good City Government Proceedings*, 1905, p. 296 et seq.

<sup>36</sup> See *Proceedings of the Atlantic City Conference on Good City Government*, pp. 170-180. This conference was held in 1906. See also the *Proceedings of the Providence Conference*, 1907, p. 27.

<sup>37</sup> Few men have given us a clearer picture of some of the problems of the mayoralty than has Mr. Whitlock in his book, *Forty Years of It*. For the account of his own struggles and labor in that position see especially pp. 205 ff. See also his open letter "On the Enforcement of Law in Cities," published in booklet form, 1913.

<sup>38</sup> For further information concerning Mayor Jones, see statement by Stiles P. Jones, *Proceedings of the New York City Conference on Good City*

who have not become mayors have made their contribution to the development of higher standards in becoming candidates at the times when the public interest demanded an effective protest, and often to no small sacrifice to themselves. There are probably very few cities that could not furnish similar examples of public spirited citizens who have aided the cause of good government in this fashion, even when without well based hope of immediate success.

In this brief review of the men who have been successful mayors during recent years it is noticeable that only men who possess executive ability to an extraordinary degree can creditably fill the office. Mr. Tom L. Johnson defined executive ability as follows: "It's the simplest thing in the world; decide every question quickly and be right half the time. And get somebody who can do the work. That's all there is to executive ability." But Mr. Johnson's definition is incomplete. It overlooks the imponderables. Mr. Whitlock, with finer insight, puts it thus: "Executive ability is a mysterious quality inhering in personality, and partaking of its mysteries."<sup>39</sup> This statement does not imply that personality, though possessed and cultivated, is a mark of executive ability. It rather summarizes the observations and facts which have been noted in this chapter. The municipal executives who have contributed to the significance and growth of the mayoralty have been men of strong and vigorous personality. Their work becomes most intelligible only when the men themselves are known; tho, on the other hand, they may frequently be known in their works. It is not intended here to attempt any definition or analysis of the mysteries of personality.<sup>40</sup> The truth of Mr. Whitlock's statement is obvious. The debt of the American mayoralty to men of personality constitutes an obligation that had assumed large proportions by the close of Josiah Quincy's six years service as chief magistrate in

*Government*, 1905, pp. 120-132. For the record of Mayor Thompson see notations in *Providence Conference Proceedings*, 1907, p. 119, and in the *National Municipal Review*, Vol. I, p. 726. Mr. Thompson won special recognition for his probe of graft in the city council, an investigation which was privately financed and which involved eighteen aldermen, a number of whom confessed.

<sup>39</sup> *Forty Years of It*, p. 205.

<sup>40</sup> Cf. *The Riddle of Personality*, by H. Addington Bruce.

Boston, that continued to increase during the years of the nineteenth century and that has been tremendously augmented during the opening years of the present era of municipal renaissance. For at best its powers and possibilities sink to the level of the commonplace when disassociated from the personal qualities of its incumbents. Municipalities can ill afford to neglect the personality of those who would administer their affairs and represent them before the state and nation.

## CHAPTER VIII

### THE MAYOR-COMMISSIONER <sup>1</sup>

The movement for concentration of power and responsibility in municipal government received a tremendous impetus from the success of the commission plan in Galveston and later in Houston. Prior to the introduction of this plan the movement had found expression chiefly in the growth of the mayoralty. From the time of the tidal wave of 1901 it has been expressed in a variety of forms, notably the commissionership and the managership in addition to the mayoralty. Beginning with Galveston a mayor-president and a group of four commissioners — the latter a term that is primarily administrative in meaning — were entrusted with all the legislative and executive functions of the municipality. Since that time approximately four hundred cities have adopted the essential principles of the commission plan.<sup>2</sup> Most of them, however, add features which aim at very complete responsibility on the part of the commissioners to the electorate and which make it possible for the latter to act directly in the expression of its will. In all cases, however, the concentration of executive power remains intact.

While it is the purpose of this chapter to consider the chief executive office under the commission system it is essential to call attention at the beginning to the fact that one of the "predominating" features of the plan is a much greater concentration of power than the mayoralty had ever known. It is in this larger measure of power that the chief executive under the commission plan shares and in the exercise of which he has a prominent and

<sup>1</sup> This term is a combination of the official titles "mayor" and "commissioner," the chief executive serving in both capacities under the commission plan.

<sup>2</sup> In reality all but two of the cities participating in this movement toward commission government have joined it since 1907, a fact that emphasizes the rapidity with which it has spread.



influential part. While in many cases he retains some of the powers which he formerly enjoyed under the mayor and council form, his relative position as chief executive is very much weaker than is that of the mayor, for there are other executives with important powers. Nevertheless it is altogether too early to affirm that the relative weakness of the mayor-commissioner in the commission plan will continue. The Royal Commission on Municipal Government of the Province of British Columbia reported in 1912 that "the tendency . . . is strongly toward one-man government."<sup>3</sup> Others have observed that there is the opportunity for the mayor-commissioner to acquire a "dominating influence." Certainly the chief executive under the commission form is in a more favorable position than was the mayor of a century ago.

By way of general description it may be said that the mayor-commissioner, mayor-president, or whatever title he may be given, is the principal member of the small group of from three to seven commissioners to whom, under the commission plan, is entrusted the determination of public policy and the administration of public affairs in a city. He is usually the head of a department over which he exercises immediate supervision. As a rule, also, he enjoys a general supervisory authority over the other departments, headed by his fellow commissioners. He is the ceremonial head of the corporation in matters of a social or legal nature. In municipal legislation he is an active participant, being the presiding officer of the commission, having a vote upon all matters, and enjoying certain other powers of varying degrees of importance. Apart from the commission plan of government viewed as a whole the office of mayor-commissioner has received little or no study, yet both because it is differentiated from the rest of the commission and because of its inherent possibilities it is worthy of attention and study.

## I. CONSTITUTION OF THE MAYOR-COMMISSIONERSHIP

The title of mayor is generally employed to distinguish the chief member of the commission from the other members who are known as commissioners or councilors. The early Galveston charter retained the title and combined it with that of the presi-

<sup>3</sup> Report, published at Victoria, B. C., 1913, p. 16.

dent of the board of commissioners, and the recent Buffalo charter provides that one of the five members of the council shall be styled the mayor. There have been a number of cases, however, in which the title has been dropped. In some Ohio cities, in Marshall, Texas, and in the North Dakota statute of 1907 the title of chairman or president is substituted for that of mayor. The title is occasionally applied to one holding an office who is comparatively distinct from the commission proper, as in St. Paul, Minnesota.

### *Qualifications*

The qualifications which obtain for the office of mayor under the commission plan are usually the same as those laid down for members of the commission.<sup>4</sup> A number of charters require candidates to be citizens either of the state or of the United States or of both. In some of the cities of Alabama the charter specifies citizenship in the city. The requirement of residence is quite general but the length of it varies greatly. In Chattanooga, Tennessee, it is one year; in New Jersey and in some cities of Oklahoma, two years; in Portland, Oregon, three years; in Oakland, California, four years, and in Houston, Texas, five years. In a majority of cases the mayor must have been a qualified elector. While Denver was under commission government the mayor had to qualify as a tax payer. In Chattanooga he must be a freeholder at the time of his election and in Kentucky and Nebraska it is merely provided that he shall be of "good character." The age qualification ranges from twenty-one years, a figure that is usually determined by the provision that the candidate shall be an elector, to twenty-five years in Oklahoma City and some of the cities of Alabama, and to thirty years in Chattanooga. In the latter city the age requirement for the mayoralty is five years higher than that fixed for the office of commissioner.

In addition to the legal qualifications which are imposed upon candidates for the office of mayor-commissioner there are certain conditions which operate to disqualify individuals from holding the office and which in effect tend to become qualifications that

<sup>4</sup> In a number of important cases no qualifications are mentioned in the city charter. Cf. charters of Buffalo, New Orleans, and Pasadena, Calif. Inasmuch as considerations of availability are really of much greater importance than are the legal qualifications, this would seem to be a step in the right direction.

those who seek the office must satisfy. Frequently the incumbent must be able to devote his whole time to the work of the office. He is often forbidden to hold any other public position.<sup>5</sup> In many cases he may not be interested in contracts or franchises, nor be an employee of any holder of a contract or franchise. A few charters provide that he may not be indebted to the state, city, or county for taxes, nor have been convicted of malfeasance in office, bribery, or other corrupt practice. In Dallas, Texas, he is excluded from being a member of any political party or serving on any party committee.

### *How Chosen*

The process of choosing the mayor under the commission plan presents many variations. Three methods of nomination are in vogue, the convention method, the direct primary, and nomination by petition.<sup>6</sup> Of these the direct primary enjoys the most favor, the petition method being a poor second and the convention method being rarely employed. Under the direct primary method petitions in the form of statements of candidacies are sometimes employed, and, in the absence of any system of preferential voting, the primary election becomes a qualifying election to determine which candidates shall be nominated to the office. This procedure is both costly and cumbersome. Owing to the *embarras des richesses* in the number of candidates who "are willing to govern . . . at from \$3,000 to \$6,000 a year" some means for weeding out candidacies appears to be imperative.<sup>7</sup> The primary election serves this purpose in a crude way, *e.g.*, "the two candidates receiving the highest number of votes for mayor shall be the candidates and the only candidates whose

<sup>5</sup> Exceptions are usually made to permit him to be a notary public and to hold a place in the militia.

<sup>6</sup> For the convention method see the charter of Huntington, Va. The Illinois general law relating to the commission form incorporates the direct primary method. See also the general acts of Nebraska and Pennsylvania and the charters of Buffalo, N. Y., Chattanooga, Tenn., Wilmington, Del., and others. The charter of Portland, Ore., and the late charter of Denver, Colo., provide for nomination by petition. The charter of Dallas, Tex., permits nominations by "written requests," petitions, primaries, the provisions governing these methods being found in Art. 3, Secs. 2-5.

<sup>7</sup> In the first election of Spokane ninety-two candidates appeared for the office of commissioner, there being five places to be filled.

names shall be placed upon the ballot for mayor'' at the regular election. In Dallas any candidate for the office of mayor who receives a majority of votes at the first election is declared elected, but failing a majority on the part of any one of the candidates a second election is held. Nomination by petition together with a system of preferential voting as worked out in a few cities appears to be preferable.

The election of the mayor is brot about in one of three different ways. In some cities he is a candidate for the office of mayor and is elected to this office by popular vote.<sup>8</sup> In others any candidate for the office of commissioner who receives the highest number of votes cast for commissioners thereby becomes the head of the commission and receives the title of mayor.<sup>9</sup> In still other instances the voters elect commissioners only and the latter elect one of their number to act as mayor.<sup>10</sup> It will be readily perceived that the position of the mayor is much stronger when he is chosen by the first method, while under the third his responsibility to the commission and dependence upon it appears fairly complete. Of course, the full significance of election by the commission as contrasted with election by the voters can be developed only as it obtains over a longer period of time than has elapsed since its introduction. It is significant that two cities which approved of election by the commission have returned to popular election, Denver by the abolition of commission government and Wilmington, North Carolina, by charter amendment.

The proportion of votes necessary to elect under popular election ranges from a plurality, or a "preponderance," in Galveston, New Orleans, and in some other cities, to a clear majority, the rule in most places. The majority result is possible usually because of the action of the direct primary election in eliminating

<sup>8</sup> Cf. the charter of Dallas, Tex., Art. 3, Sec. 2: "Candidates for mayor and for places on said board of commissioners shall be voted for separately." Also the charter of Oakland, Art. 5, Sec. 14, and Art. 4; the charter of Portland, Secs. 18a, 18b, 22, and 35. The charters of Buffalo, New Orleans, and many other cities and the general laws of Illinois, Iowa, Alabama, Pennsylvania, and some other states provide for popular election.

<sup>9</sup> See the general act of W. Va., Art. 5, Sec. 20. Also the charter of Wilmington, N. C., amended in 1913 to provide for popular election.

<sup>10</sup> This practice was introduced in New Jersey in 1911. Laws, Chap. CCCLXVI, Sec. 3. Cf. also charters of Spokane, Art. 3, Sec. 9, and Pensacola, Sec. 9.



all but two candidates for the office. In a number of cities, Grand Junction, Colorado, being an example, the majority result is secured by the adoption of a form of preferential voting. Of the three methods of making the count, the plurality system has the least to recommend it, while the preferential system contains sufficient promise to gain for it increasing recognition and adoption among cities operating under this form.<sup>11</sup>

### *Removal from Office*

The determination of municipal electorates to find effective means by which they may get rid of undesirable public servants is abundantly manifest by the provisions to be found in commission government charters. Of these provisions the most common is the recall. It is present in the general acts of many of the states and in numerous special charters.<sup>12</sup> It is applicable to the mayor as well as to the other commissioners. The next most important method of removal is by a vote of the commission, a process which usually obtains where the commission elects the mayor and sometimes in other cases also.<sup>13</sup> Mayors may also be removed by judicial proceedings as well as by the recall or other process. In Huntington, West Virginia, there is created a Citizen's Board, popularly chosen, and competent to remove municipal officials for certain causes specified in the state constitution. In New York the governor may remove the mayor as in the case of cities operating under the mayor and council plan. Impeachment as well as the recall are available in Houston and Corpus Christi, Texas. In Louisiana the constitution provides for removal by

<sup>11</sup> The preferential system has been adopted since 1909 in more than a score of the cities under commission government. For list of them, see *Equity*, Vol. XVII, p. 51 (January, 1916). For explanation of the preferential system see article on "Preferential Voting," by Robert Tyson in Beard's *Digest of Short Ballot Charters*, p. 21501.

<sup>12</sup> Bradford, *Commission Government in American Cities*, p. 276. To the list given by Mr. Bradford should be added the states of Georgia, Florida, Missouri, Nebraska, Wisconsin, and perhaps some others. The recall is usually found in special charters.

<sup>13</sup> In Battle Creek, Mich., by a vote of four-fifths of the commission; in Bluefield, W. Va., by a vote of two-thirds of the commission. In Kentucky the vote must be unanimous on the part of the other members. *Cf.* Act of 1910. In Denver the mayor was not only chosen by the commission but was "removable at will" by it under the charter discarded in 1916.

the district court upon suit instituted at the written request of twenty-five resident tax payers.

### *Term of Office*

The term of office of the mayor-commissioner is usually the same as that of his fellow commissioners and varies from one to six years. In some cases, however, the mayor serves for a shorter term. Thus in Pensacola, Florida, the mayor is elected by the commission and serves for but one year, a situation which is doubtless related to the fact that one of the three commissioners is elected each year, making the body a continuing one. The shorter term for the mayor is also found in certain cities in Oklahoma and California. In the Kentucky general act, on the other hand, the term of the mayor is four years, that of the commissioners but two. Practice is far from uniform as to the time at which the mayor shall be chosen, even in those cities and states in which the length of the mayor's term is the same as that of the commissioners. In many cases the mayor and the other commissioners are all elected at the same time; in others the mayor and part of the commission are chosen at one election, the remaining commissioners at another.<sup>14</sup> As a rule, however, this variation does not appear to affect the length of the term for which the mayor is elected.

### *The Filling of Vacancies*

In the filling of vacancies in the mayoralty the commission plan is far from achieving uniformity of method in the cities which have adopted it. Four principal methods are employed; of these two are much more important than are the others. The first in importance is that of the temporary appointment or election by the commission "of an eligible person" to fill the vacancy until the next general municipal election, at which time "the vacancy shall be filled by election for the unexpired term." This method obtains in Buffalo, Portland (Oregon), Oakland and Pasadena (California), Chattanooga (Tennessee), Spokane, Oklahoma City, Pensacola (Florida), the third class cities of Utah,

<sup>14</sup>For further discussion of the length of the term and the practice of alternating elections, see Bradford, pp. 157-160. The author points out (p. 160) that the average term of the mayor is somewhat shorter than the average term of the commissioners, a fact which may indicate some recognition of his greater authority and the need for proportionately greater control.

and many other places. Of like importance are the provisions found in the general laws of Illinois, New Jersey, Nebraska, and in the charters of St. Paul, Birmingham, Wilmington (North Carolina), and other cities granting to the commission the power to fill such a vacancy "during the balance of the unexpired term." In both of these methods the task which the council performs is important, but in the second method the failure to resort to popular election is worth noting, especially as this feature has been made the object of attack by those who have opposed the adoption of the commission plan in cities proposing to come under it. Of the other two methods in vogue that of calling a special election to fill the vacancy appears to be the most important. It is found in the charters of Lowell and Lynn (Massachusetts), Houston (Texas), the general act for second class cities in Kentucky, and some other cases.<sup>15</sup> The last important method of filling vacancies is that provided for in cities between twenty-five and fifty thousand inhabitants in Alabama, in which the governor of the state makes the appointment for the remainder of the unexpired term.<sup>16</sup>

Vacancies are defined in terms very similar to those employed under the mayor system. Death, resignation, removal, absence from the city for a specified period, usually six months, incompetency, judicially declared, failure to qualify, continued disability, or conviction for felony constitute the causes which are declared to effect a vacancy.<sup>17</sup> In the case of Portland, Oregon, and a few other cities the voluntary acquisition of an interest in public service enterprises or public contracts operates to vacate the office "at once."<sup>18</sup>

<sup>15</sup> Lowell, Charter, Sec. 56. If the vacancy occurs within four months prior to the annual city election the council is authorized to fill the vacancy. The same is true in Lynn. See Charter, Sec. 60; but no such exceptions are made in the other cases cited. Cf. Kentucky, Act of 1910 as amended in 1912, Sec. 22; and Houston, Charter, Art. 9, Sec. 17a, an amendment of 1913.

<sup>16</sup> See Act of 1911 as adopted by Montgomery, Sec. 14. The fact that the act was intended to apply primarily to the capital of the state may be significant in this case. In Pensacola the governor appoints temporarily under certain circumstances.

<sup>17</sup> Cf. the charter of Spokane, Art. 2, Sec. 8; also the general act for cities of the second class in Kentucky, Sec. 22.

<sup>18</sup> Charter, Sec. 18f. "If he shall become so interested otherwise than

As under the mayor system, the commission plan knows an "acting mayor" or "mayor pro tem," who is usually selected by the commission or council from among its own number, tho in cities in which there is a president of the council in addition to the mayor, the president becomes the acting mayor.<sup>19</sup> The acting mayor enjoys the powers of the mayor and performs his duties during the temporary absence or disability of the mayor, subject to the restriction that in matters admitting of delay he shall await the return of the mayor.<sup>20</sup> In Houston, Texas, the mayor pro tem acts during the interim between the occurrence of a vacancy and the holding of the special election and enjoys "all the rights and powers of the Mayor, and performs all of his duties." In some cases, as in Buffalo, the office of acting mayor is not provided for, the council merely being authorized to choose another presiding officer temporarily but nothing more.

### *Salaries*

The mayor-commissioner is usually paid a larger salary than his fellow commissioners. There is no agreement in the practice of the various states and cities in this regard, however, and the difference in the amounts paid to the mayor and to a commissioner ranges from little or nothing at all to several times the salary of the commissioner.<sup>21</sup> Both of these extremes are excep-

voluntarily he shall within ninety days divest himself of such interest, and failing to do so his office shall become vacant upon the expiration of the said period of ninety days." This provision supplements that part of the section cited above.

<sup>19</sup> As in the city of Portland, Ore. See Charter, Sec. 19. Cf. also Lynn, Mass., Charter, Sec. 60. The method of selecting the mayor pro tem shows some variations. In Houston, the mayor nominates him from among the aldermen at the first regular meeting of the council. He receives no additional salary. See Charter, Art. 4, Sec. 2. In other cases the president of the council is elected by the council, or, as in the case of Illinois the commissioner of accounts and finance is by state law made vice president of the council and becomes acting mayor. See Act of 1910, Sec. 32.

<sup>20</sup> Cf. Houston, Charter, Art. 6, Sec. 3; also Lynn, Sec. 61. The restrictions in Houston have to do more particularly with the exercise of the appointive power. In Kentucky cities the acting mayor appears to be without limitations except those operating in case of the mayor also. Some charters omit the "rights and powers" but impose the "duties" upon the temporary incumbent.

<sup>21</sup> Waco, Tex., pays its commissioners one thousand dollars and its mayor



tions to the usual custom which gives the mayor anywhere from one-seventh to four-fifths more than the commissioners receive.<sup>22</sup> There are a few cities, however, which make no distinction between the mayor and the other members of the commission in this particular. With but few exceptions the mayor-commissioner is better paid than was the mayor under the old form of government. The salaries to be paid are, as a rule, specified by the charter or by the law of the state, but in Wilmington, North Carolina, the council is permitted to exercise its discretion within a prescribed maximum of three thousand and minimum of eighteen hundred, the mayor having no vote on this question.

### *Miscellaneous Features*

There are comparatively few miscellaneous features found in connection with the constitution of the mayor-commissionership, and none of them may be called characteristic of the office as differentiated from the other places on the commission. The prescription of the oath of office, the process of induction into the position, etc., are similar to like features described under the mayor system. The incumbent must give bonds, the amount of which is often quite large. Provision is sometimes made for secretarial and other assistance. In none of these respects, however, has the mayoralty under the commission system developed any marked departures from that which obtains under the mayor plan.

A comparative survey of the chief magistracy as it is constituted in the mayor and commission plans respectively shows many interesting and a few important lines of differentiation in the commission plan. In the first place there is some tendency to substitute a new title for that of mayor, a development that does not appear to be making great headway. The efforts put forth to free the mayor from professional political affiliations twenty-four hundred dollars. Marshall, Tex., is even more abnormal, paying its mayor eighteen hundred dollars and the commissioners three hundred.

<sup>22</sup> Buffalo pays the mayor eight thousand, the commissioners seven thousand; Portland pays the mayor six thousand, the commissioners five thousand; St. Paul pays the mayor five thousand, the commissioners four thousand five hundred; New Orleans pays the mayor ten thousand, the commission councilmen six thousand.

have been of little value. The retention of popular election as the method of choosing him appears to be permanent. Preferential voting has increased the political effectiveness of the elector with respect to this office. The desirability of longer terms seems to have gained some recognition under the commission system. The filling of vacancies thru election by the commission is an innovation that has worked no ill, but it is debatable in principle and of doubtful value. The requirement of full time service and regular office hours together with a disposition to increase salaries constitutes a step in the direction of efficient and professional service.<sup>23</sup> The essential differences between the mayor-commissionership and the mayoralty are not indicated, however, by their respective constitutions, but rather in their relations to municipal administration and legislation.

## II. THE MAYOR-COMMISSIONER AND ADMINISTRATION

The relation of the mayor-commissioner to municipal administration is determined, in general, by two well defined conceptions of his position and authority. According to the first view the office occupies a place very similar to that found in connection with the federal plan. It is the chief executive office of the corporation. Its incumbent should have authority of a greater or less degree over all the administrative services of the city. The second view recognizes the mayor-commissioner as merely the first among equals, the commission itself being responsible for the administration. No special powers attach to the mayoralty, and its incumbent enjoys only the added dignity which his function as presiding officer may bestow, together with that which may be involved in the performance of his social and ceremonial duties as titular head of the city government. In both of these conceptions and the practices in which they are embodied the position of the mayor as one of the commissioners, and as such the head of a department, is much the same.

### *The Strong Mayor Type*

The charters of many cities and the statutes of some states have embodied the conception of the mayor-commissioner as the head of the administration.<sup>24</sup> This embodiment is, however, by

<sup>23</sup> For an example of a provision relating to office hours, etc., see Oklahoma City, Charter, Art. 2, Sec. 13.

<sup>24</sup> Cf. the charters of Buffalo, Portland, Ore., New Orleans, St. Paul,

no means uniform either in expression or in purpose. The provisions which bestow special authority upon the mayor may carry with them little more than powers of general supervision. Thus in the city of Buffalo the mayor is required "to acquaint himself with the conduct of each of the other city departments" and is authorized to recommend changes or innovations that will promote their efficiency and economical operation.<sup>25</sup> In the commission government act of Kentucky the mayor is authorized to exercise "a general advisory supervision over the affairs of all the departments." The Nebraska act imposes a similar duty upon the mayor in the following terms: "the Mayor shall, in a general way, constantly investigate all public affairs concerning the city's interest and investigate and ascertain, in a general way, the efficiency and manner in which all departments of the city government are being conducted." He is also empowered to make recommendations with respect to matters of administration.

There are many cities, however, which go much further than the group just described and which give to the mayor-commissioner power and opportunity for the active direction of administration. The power of appointment subject to the confirmation of the council, is vested in the mayor of Houston, Texas. In Portland, Oregon, in St. Paul and a number of other cities the mayor assigns the commissioners to their respective departments and in some cases he may reassign them "at his discretion."<sup>26</sup> The mayor of Dallas, Texas, "nominates" all appointive officers of the city except the auditor, the confirmation of the council being required and the mayor being denied a vote in this matter.<sup>27</sup> The removal power is found in Houston and St. Paul,<sup>28</sup>

Houston, Dallas, Oakland, and Wilmington, and the statutes of Nebraska, Kentucky, Pennsylvania, New York, and Massachusetts.

<sup>25</sup> Charter, Sec. 42.

<sup>26</sup> Portland, Charter, Sec. 20a. The order making the assignment has the force of an ordinance and is preserved and filed as such. *Cf.* also Sec. 20a. For St. Paul, see Charter, Sec. 57, 58. It will be observed that the mayor of St. Paul has but one such opportunity, viz., the first Monday in December following his entrance upon the duties of his office, while the mayor of Portland may make reassignments "whenever it appears that the public service will be benefited thereby."

<sup>27</sup> Charter, Art. 3, Sec. 6.

<sup>28</sup> Houston, Charter, Art. 5, Sec. 2. The council also possesses the power

and the power of suspension pending an investigation in Portland and in Wilmington, North Carolina. The power to conduct investigations into official conduct carries with it the right and authority to compel attendance and testimony, administer oaths, and examine witnesses.

A number of other cities which do not vest the powers of appointment in the mayor assure his active participation in the conduct of the administration by other means. Thus in New Orleans the mayor is *ex officio* a member of each board, commission, or body created or authorized either by the charter or by any subsequent ordinance. In addition he is charged with the general oversight of the administration, and with the enforcement of the state laws and municipal charter and ordinances. In Dallas it is made his special duty to see that the provisions of franchises and contracts are complied with, and in Oakland he is particularly charged with the supervision of public utilities, contracts, and the enforcement of law. In Wilmington, North Carolina, the mayor is *ex officio* chairman of all departments of the city.

### *The "Strong" Mayor vs. the Ordinary Mayor*

The foregoing indicates what is meant by the strong mayoralty under the commission plan. Except in a few cases, among which Houston is the most prominent, the "strong mayor" exercises very much less authority than does a mayor under the federal plan. On the other hand, the tendency to retain the mayoralty with many of its powers unimpaired is most evident in the

to remove. It will be observed that the mayor's power extends to "all officers or employees" in the city service. The provision "for cause" is so broad as to leave the action in the discretion of the mayor. He may, however, be required to file a statement of the reasons in the public archives of the municipality. For St. Paul provisions see Charter, Secs. 59 and 60 of Art. 5. It will be observed that he may start proceedings for the removal of any councilman either as councilman or as the head of an administrative department. The mayor's action in the case of non-elective officials and employees must be preceded by notification of the officer or body having the power to appoint and requesting removal. If the request is not complied with the mayor may then "in his discretion" make the removal, but must, on demand, file a bill of particulars with the city clerk. The mayor of St. Paul is also restrained from removing the appointees of the controller, an official who, in practice, has proven to be of much more consequence than any other elective officer.



larger cities that have adopted the commission plan. While it is undoubtedly true that in the great majority of commission governed cities the mayoralty has been "merged in the board," the mayor apparently being little more than presiding officer, yet it is pertinent to note that in those centers of population where the plan is likely to be put to the greatest strain, the office maintains something of its individuality. The "tendency to one man government" noted by the Royal Commission of British Columbia in its investigation of commission government in the United States can under ordinary circumstances have but one direction, viz., toward the development in the commission plan of a powerful mayoralty. Such a development may not obtain legal recognition until some time after it has actually assumed importance in the affairs of government. Such an evolution would gratify many critics and opponents of the commission plan who have contended that the absence of a central dominating mind empowered to coördinate and control administration constitutes a serious defect in the plan.<sup>29</sup>

#### *As Commissioner*

The mayor-commissioner is generally the head of a department, tho this function was not imposed upon him in the original commission plan as developed in Galveston, and has not been a feature of the office in some other cities.<sup>30</sup> The department of which he is the head is usually specified in the charter, but there are frequent exceptions to this rule.<sup>31</sup> The most favored departmental assignment for the mayor is that of public affairs. On the other hand, in some commission cities the departments of public safety, of finance and public affairs of administration, of accounts and finances, of public affairs and public education, and of water and waterworks, are respectively designated as the posts

<sup>29</sup> For brief reviews of the mayoralty under the commission plan, see Woodruff, C. R., *City Government by Commission*, pp. 121, 123; Bruère, Henry, *The New City Government*, pp. 63-68, and Bradford, *Commission Government in American Cities*, pp. 204-207. Mr. Bruère's work contains an enumeration of the mayor's powers in selected cities.

<sup>30</sup> For example Houston and St. Paul and Haverhill, Mass.

<sup>31</sup> In Portland, Ore., the mayor appears to be free to select the department of which he becomes the head. The same is true in Huntington, W. Va. In many cities the council or commission may designate the department to which each member shall devote his attention.

to be filled by the mayors.<sup>32</sup> With very few exceptions the mayor, as commissioner, enjoys all the rights and privileges accorded to the other members of the commission. He shares in the general executive and administrative authority vested in the commission as a whole, and frequently exercises great influence in its conduct of the affairs of the city. As commissioner he is responsible for the conduct of his department, and often enjoys considerable power of appointment and removal within the department.

In addition to the foregoing description of the position of the mayor-commissioner in administration, it should be noted that he often enjoys considerable reserve and emergency powers conferred under the general laws of the state, a factor that contributes something to his standing and dignity.<sup>33</sup> He may also be charged with certain ministerial duties similar to those imposed upon the mayor under the federal plan.<sup>34</sup> In a few cases he retains judicial powers of some consequence.<sup>35</sup>

### III. THE MAYOR-COMMISSIONER AND LEGISLATION

In accordance with the principle of commission government which seeks to concentrate the administrative, legislative, and other authority of the municipality in the hands of the commission and then distribute a share of each of these branches of power among the various commissioners, the mayor-commissioner exercises important powers in legislation. These may be divided into the powers which he enjoys by virtue of his position as mayor and those which are his by reason of his membership on the commission.

As mayor, president, or chairman of the board or commission,

<sup>32</sup> Cf. the charters of Salem, Mass., Lawrence, Mass., the Massachusetts statute of 1915, Plan "C," the charters of Gardner, Me., Cartersville, Ga., the Louisiana statute of 1910, the charters of Colorado Springs and a number of other cities for examples of different commissionerships that may be filled by the mayor. The commission government acts of Illinois, Arkansas, and Pennsylvania and the charters of many cities will give the provisions specifying the department of public affairs.

<sup>33</sup> See, for example, Oklahoma City, Charter, Art. 2, Sec. 4.

<sup>34</sup> The first part of section 4 in the charter of New Orleans enumerates some of these duties, such as the custody of the seal of the city, the signing of all contracts, bonds, and other instruments, etc.

<sup>35</sup> Cf. the Code of Criminal Procedure of 1911, State of Texas, for the provisions relating to the issuing of warrants, the keeping of dockets, etc., by the mayors of cities in that state.

the chief executive may call special meetings,<sup>36</sup> presides over all sessions at which he is present,<sup>37</sup> and is entitled to submit proposals, recommendations,<sup>38</sup> and in some cases to prepare and lay before the council the annual budget.<sup>39</sup> In a number of cities he retains the veto, either in its suspensive or its qualified form,<sup>40</sup> and in one case he has the selective veto with respect to items in appropriation measures.<sup>41</sup> His signature is often required to be affixed to ordinances and other records of the council. It is apparent, however, that his powers of coercion in matters of policy determination are largely curtailed; the influence of the powers of appointment, removal, and veto being quite generally denied to him.<sup>42</sup> On the other hand, his position as commissioner in

<sup>36</sup> See, for example, the charter of Lowell, Mass., Sec. 23. This power is also entrusted in this case to the president of the council and to any two members of it. The usual provisions for notice of time and place obtain. Many charters omit any mention of this power.

<sup>37</sup> There are a few exceptions as in San Diego, Calif., but even in cities like Lowell and Portland, Ore., which has a president of the council in addition to the mayor, the latter presides "if present." Ordinarily the charters specify that the mayor shall be the presiding officer. Cf. Oklahoma City, Charter, Art. 4, S Sec. See message of mayor of Lincoln, Nebr., July 17, 1916.

<sup>38</sup> See St. Paul, Charter, Chap. V, Sec. 1; Dallas, Charter, Art. 3, Sec. 15; and the general act of New Jersey, Sec. 5, and of Illinois, Sec. 32.

<sup>39</sup> The budget is prepared and submitted by the mayor in Houston, Dallas, and some other cities in Texas; in Pennsylvania he is expected to keep the board informed as to the financial needs of the city.

<sup>40</sup> Cf. charters of High Point, N. C., St. Paul, and Chattanooga, and Houston, Greenville, Dallas, Beaumont, Denison, Corpus Christi, Marshall, all in Texas, Tulsa, Ardmore, and Salpula in Oklahoma, Colorado Springs, (selective), San Diego, Calif., and Lewiston, Idaho. In Houston and Dallas, Tex., and Tulsa, Okla., the mayor has a vote on the question of sustaining his veto, a power that is clearly due to his being a commissioner as well as a mayor.

<sup>41</sup> Colorado Springs, Charter, Art. 4, Sec. 24. The vote of four members of the council of five is necessary to override this vote. Inasmuch as the mayor is the fifth member, it means that the rest of the council must be a unit against his act.

<sup>42</sup> The special committee of the National Municipal League on City Government by Commission says in its report, Sec. 9: "It is doubtful whether the mayor should have a veto over his confrères or in fact any added powers lest he overshadow the other commissioners and attract the limelight at their expense, leaving them in obscurity where the people cannot intelligently and justly criticise them." *National Municipal Review*, Vol. I, p. 42.

some measure compensates for the powers which he has lost as mayor.

In the capacity of commissioner the mayor may participate and vote on practically all matters coming before the council. Inasmuch as the commissioners are rarely more than five in number, and in smaller cities often only three, it is apparent that his voting power is greatly augmented above that which the mayor under the federal plan, with his casting vote, enjoys. Coupled with whatever other legislative authority he may possess and with his general and administrative powers the mayor-commissioner often exercises an influence in municipal affairs that would compare favorably with that of many mayors under the federal plan. On the other hand, the relatively great powers enjoyed by the other commissioners, especially in matters of public policy, renders it less likely that the mayor will dominate except by the force of his personality and the processes of moral suasion. The pressure of political forces, so common under the mayor system, is usually greatly minimized under the commission plan, a factor which does not, however, necessarily weaken the position of the mayor-commissioner.

A few observations based upon the foregoing survey of the office of chief executive under the commission plan can be made in conclusion. Altho mayoralty has undergone great modifications in its adaptation to the commission plan, it has usually survived as an office of some importance, and in significant instances it has retained much of its former power and prestige. Generally, however, there has been little disposition to magnify it and it has seemed to merge in the executive authority vested in the commission as a whole.

In the second place it should be noted that in actual practice the mayor-commissioner is often much more powerful than the provisions of charters and statutes indicate. This is the result of an undoubted tendency to create a powerful chief executive under this scheme of organization as well as in other fields of American government. It is a tendency that may be expected to become better defined as the plan is adapted to large cities where the exigencies of government will demand the guiding hand of some one man to unify policy and coördinate administration, and also as the legal provisions which now constitute the



office become modified by amendment so as to conform with custom. One can predict the development of this tendency with some assurance. The impact of the manager plan upon the commission form has been felt most keenly at the point of executive organization and in the field of administration. It is also significant that Denver, which tried to snuff out the mayoralty under two years of pure commission government, has returned to the mayor system, and that Wilmington, North Carolina, has substituted a strong mayor-commissionership for a weak one.

Finally, the sweep of the commission plan and its remarkable and consistent record of success have been a continuing challenge to the old mayoralty. The result has been the revival of the latter into new life and vigor, a condition which cannot fail to react upon the commission form. Such reaction will manifest itself, in part, in the strengthening of the mayor-commissioner.

## CHAPTER IX

### THE CITY MANAGER

Nothing is more significant of the trend in municipal government than the country-wide interest which is manifested in the development of the city manager plan. The readiness with which it has been adopted in scores of cities, its recognition in the general municipal statutes of a number of the states, and its advocacy by the National Municipal League in the model charter recommended by that organization in 1915 combine to promise for it increasing consideration and acceptance by municipal charter commissions and electorates. The feature of the plan with which this work is concerned is the introduction of an expert chief executive called the city manager who is responsible to a powerful representative legislative body, the council or commission. The mayoralty barely continues a perfunctory existence. Its incumbent is reduced to the position of a figurehead in administration, tho as councilman or commissioner he may be active and influential in the determination of public policy. The city manager becomes the chief executive.<sup>1</sup>

#### *The Mayoralty*

The condition of the mayoralty under the manager plan constitutes a fitting introduction to a consideration of the place and functions of its successor. As in the commission plan the mayor

<sup>1</sup> There are exceptions as in the case of Phoenix, Ariz., in the charter of which the mayor is made the "chief executive of the city" with authority that gives considerable substance to the title. See Charter, Chap. V. In the charter proposed for Douglas, Ariz., the disposition to retain a powerful mayoralty was quite apparent. The mayor was not only to enjoy the usual authority given him under the manager plan but was charged with "the general oversight of all departments, boards and commissions of the city" and was the sole party thru whom the regulations, directions, and orders of the municipal commission were to be transmitted to the city superintendent (manager) and to such other city employees as might be necessary. It

is a member of the legislative body. He is first a councilor or commissioner, then a mayor with whatever limited prerogatives the latter office may carry with it. The qualifications for the place are the same as those that obtain for councilor.<sup>2</sup> The methods by which the incumbent may be chosen are three in number: first, by direct popular vote; second, by receiving the highest number of votes cast for any member of the commission; and third, by election at the hands of the commission.<sup>3</sup> In Springfield, Ohio, the failure of the commission to choose a president (mayor) brings into operation a fourth method, viz., the lot.<sup>4</sup> The mayor may be removed by the recall, by judicial or statutory process, and in New York and Ohio by the governor of the state.<sup>5</sup> In some charters the mayor is given a term shorter than that which he enjoys as a member of the commission, a practice which is necessitated by the election of part of the commission every second year, thus making it a continuing body.<sup>6</sup>

should be noted that the title of mayor sometimes gives way to that of president or chairman as in the commission form. Cf. charters of Springfield, Ohio, and La Grande, Ore.

<sup>2</sup> Cf. the provisions of the charters of Dayton (Sec. 6), Springfield (Sec. 3), and St. Augustine, Fla. (Sec. 11).

<sup>3</sup> Direct popular vote on the mayoralty obtains in Hickory, N. C.; Phoenix, Ariz.; Jackson, Cadillae, and Manistee, Mich., and in Amarillo and Sherman, Tex. It also obtains in a number of other cities and is provided for in the general laws of New York state. The candidate for commissioner who receives the highest number of popular votes becomes mayor in Dayton, and in cities adopting the manager form as provided for in the general charter act of Massachusetts. This method was also a feature of the original Lockport proposals. Election of the mayor by the commission is the most common method and tends to place the mayoralty in the same relative position with respect to legislation that it usually occupies under the commission plan. Cf. the charters of Springfield and Sandusky, Ohio; Sherman, Tex.; Collinsville, Okla.; Montrose, Colo., and San Jose and Bakersfield, Calif., and the general acts of Iowa and Virginia.

<sup>4</sup> Springfield, Charter, Sec. 6. The lot is to be conducted by the city solicitor.

<sup>5</sup> The recall is not provided for in Massachusetts and New York and in a number of cities with special charters but it is the most widely used of the methods noted.

<sup>6</sup> See the charters of Springfield and Sandusky, Ohio, and Jackson, Mich. In these cases the mayor is chosen for two years, while his term for commissioner is four years. A new mayor is possible following each election of commissioners.

Otherwise his term as commissioner and mayor is usually the same. The salary of the mayor generally is no more than that of any other commissioner, but in some cities he receives a somewhat larger remuneration. In the original Lockport plan it was proposed that he should be paid double the amount paid to other members of the council; in Dayton, Ohio, the mayor is paid eighteen hundred dollars and the commissioners twelve hundred dollars per year.<sup>7</sup> In no case is the remuneration large enough to make the office specially attractive from the standpoint of salary alone. Vacancies in the mayoralty are in almost all cases filled by the council. In some cases it elects the mayor pro tempore at the same time that it chooses the mayor, in others at the time when the vacancy occurs.

The powers of the mayor under the manager form of government are exceedingly limited. He is the presiding officer of the commission or council,<sup>8</sup> and enjoys a voice and a vote in its deliberations.<sup>9</sup> With but one exception he has been denied the veto power.<sup>10</sup> The duty of furnishing the council with information thru messages and reports, and the privilege of submitting executive proposals and recommendations appear to have fallen into abeyance or to have been transferred to the city manager.<sup>11</sup> In a number of proposed charters his power to appoint the committees

<sup>7</sup> The amount to be paid is usually specified as a fixed sum (\$2, \$5, or \$10) per meeting or per month. In some cases the monthly rate is twenty-five or fifty dollars. In Cadillac and Manistee, Mich., no salary is provided. In Jackson the mayor receives seven hundred and fifty dollars, in Ashtabula, Ohio, one hundred and fifty.

<sup>8</sup> The terms "council" and "commission" are employed synonymously in treating of the legislative organ under the manager form. Both terms are found in the charters that are classified in this group. The model charter of the National Municipal League uses the term "council." This term is to be preferred, tho a majority of the cities that have adopted the manager system probably use the other title.

<sup>9</sup> In the charters proposed for Lockport, N. Y., and for Youngstown, Ohio, the mayor was given two votes if necessary to break a tie in the commission, a situation that might arise during the absence of a member or when one of the commissionerships was vacant. Cf. Youngstown, Proposed Charter, Sec. 44.

<sup>10</sup> In Elizabeth City, N. C., the charter enables the mayor to veto ordinances, contracts, and franchises.

<sup>11</sup> An exception is found in the city of Phoenix, Ariz.



of the council has been affirmed and the practice is established in Manistee, Michigan.<sup>12</sup>

The administrative authority and duties of the mayor (or president) under the manager form are usually of minor importance. He is the official head of the municipality for ceremonial purposes and is the officer to be recognized by the courts for the service of civil process and by the governor for military purposes.<sup>13</sup> A charter provision that occurs frequently requires him to perform such duties as may be prescribed by law and ordinance, while other charters give him such powers and duties as are prescribed in the charters "and no others."<sup>14</sup> In Springfield, Ohio, and a few other cities the charter expressly declares that the use of the title of mayor shall not confer upon the holder "the administrative or judicial functions of a mayor under the general laws of the state."<sup>15</sup>

On the other hand the mayor is sometimes invested with emergency power of no small moment. Thus in Dayton, Springfield, and Manistee, and under the general law of New York, the mayor in times of public danger or emergency may assume control of the police and govern the city by proclamation, and in some cases is made the judge of when such conditions exist.<sup>16</sup> In the model charter of the National Municipal League it is proposed that emergency power of this character be given to the mayor subject to the restriction that it be exercised "with the consent of the council."<sup>17</sup> In addition to this occasional emergency authority the mayor sometimes has other duties of importance.

<sup>12</sup> See the charters proposed for Youngstown, Ohio, and for Douglas, Ariz. Also that of Manistee, Art. 4, Sec. 14.

<sup>13</sup> Cf. the charters of Hickory, N. C.; Dayton, Ohio; Wheeling, W. Va.; Manistee, Mich.; Amarillo, Tex., and Phoenix, Ariz. Provisions to these ends appeared in the original Lockport proposals.

<sup>14</sup> For example, Dayton and Springfield use the first method of determining the mayor's range of power and action, while Hickory and Manistee limit the mayor to the sphere outlined in the charter itself. There is doubtless a fear that the former mayoralty may reappear under the new form of government.

<sup>15</sup> See Springfield, Ohio, Charter, Sec. 6. In the case of Cadillac, Mich., no definition of the place and functions of the mayor is incorporated in the charter.

<sup>16</sup> For example, see charter of Springfield, Sec. 6. The New York provisions are incorporated in what is known as "plan C."

<sup>17</sup> "A Model Charter," etc., Sec. 6.

In Sherman, Texas, he is charged with the task of making an audit of the city accounts annually;<sup>18</sup> in Jackson, Michigan, he is clothed with the power of a sheriff;<sup>19</sup> in Phoenix, Arizona, he is authorized to enforce the law;<sup>20</sup> and in Hickory, North Carolina, he may administer oaths.<sup>21</sup> On the whole, however, the magisterial powers which were retained in the Lockport proposals have not found favor with the framers of city manager charters.<sup>22</sup> The judicial powers of the mayor are either expressly abolished as in Springfield or are ignored by the charter makers.<sup>23</sup> In Douglas, Arizona, it was proposed to retain in the mayoralty the power to remit fines, costs, forfeitures, and penalties imposed for violation of municipal ordinances, but this charter was not adopted.<sup>24</sup> In some cases the mayor retains certain ministerial functions such as the signing of ordinances, resolutions, and legal documents and in New York state he is charged with the custody of the seal of the city over which he presides.<sup>25</sup>

It is apparent from the foregoing description that the mayoralty has little opportunity for renewed development under the city manager plan. Indeed, there is no prospect that such development will occur. The office is reduced to a position lower than that which obtained under the council regime of the early nineteenth century and certainly much less prominent than that attained in the Baltimore charter of 1796. However influential the mayor may become in legislation due to personal strength and force of character, the compactness of the council, the latter's collective responsibility for the conduct of municipal affairs, and the appearance of the expert executive as the dominating factor in political execution, all seem to preclude any marked or permanent expansion of mayoral authority and influence. It is to the office of city manager that one must turn in order to describe the chief executive position in cities under this form of government.

<sup>18</sup> See Beard, C. A., *Digest of Short Ballot Charters*, p. 36031.

<sup>19</sup> *Ibid.*, p. 35015.

<sup>20</sup> Charter, Chap. V, Sec. 1.

<sup>21</sup> Charter, Art. 5, Sec. 2.

<sup>22</sup> See Lockport proposals, Art. 6, Sec. 46.

<sup>23</sup> Charter, Sec. 6.

<sup>24</sup> Proposed Charter, Art. 6, Sec. 2, Par. (a).

<sup>25</sup> Cf. Beard, *Digest of Short Ballot Charters*, p. 32001.

### *The City Managership*

The genesis of the city managership in this country is a matter of comparatively recent history. The idea of a municipal executive chosen by a representative council on the basis of his fitness and ability to administer the affairs of the corporation long appealed to Americans who had observed and studied the workings of municipal government abroad, especially in Germany. The idea has, indeed, found expression on numerous occasions and frequently in such opportune places as before charter commissions.<sup>26</sup> It is not altogether unexpected, therefore, during a period of rapid development in municipal government as evidenced by the perfecting of the mayor system and by the spread and development of the commission plan to find the conception of an expert executive finding favor in some one of the many centers of activity. Tho it failed in the effort, Lockport, New York, was the first community to seek to realize the conception now embodied in the city managership. Staunton, Virginia, succeeded in grafting the idea on to the old stem of mayor and council government. Sumter, South Carolina, grasped the opportunity offered it by the legislature of the state to adopt the city manager idea root and branch, a step which was heralded to the world on October 20, 1913, by the appearance of an advertisement for a city manager. Since that date the plan has been adopted, either in a complete or modified form, in scores of cities representing all sections of the country.<sup>27</sup>

A survey and analysis of the provisions creating the city managership discloses many interesting points with regard to the use of the title, the constitution of the office, and the powers vested in it. The contrast with the mayoralty and the mayor-commissionership is usually quite striking. The chief executive under the manager form is in most cases styled the city manager, but this

<sup>26</sup> For example, Messrs. C. E. Merriam, Walter L. Fisher, and Alderman Frank I. Bennett advocated the election of the municipal executive by the council before the Chicago charter convention of 1905. Cf. article by George C. Sikes in the *Proceedings of the Providence Conference for Good City Government* (1907), pp. 191, 192.

<sup>27</sup> There are many discussions of the city manager plan in both magazine and newspaper files. The best work on the subject up to date is found in the National Municipal League Series, *The City Manager*, by H. A. Toulmin, Jr. The volume reveals special familiarity with the operation of the plan in Dayton, Ohio.

title is varied. It is the "general manager" in Cadillac, Michigan, and La Grande, Oregon; the "business manager" in Collinsville, Oklahoma; and in Texas it has been proposed to apply the title of "mayor" to the incumbent of the office.<sup>28</sup> It now seems well assured that the title of city manager will be generally accepted, especially as it has been incorporated in the model charter recently recommended by the National Municipal League and is already employed in such a predominate number of the cities having this form of government.

The constitution of the managership is relatively simple as compared with that of the mayoralty. The qualifications for the office are determined by the legislative organ of the municipal government. The charters very often specify that residence in the city is not necessary, and in practice there seems to be little disposition to discriminate in favor of residents.<sup>29</sup> Provision is usually made for the selection of the manager without regard to his political beliefs, a policy which is also frequently evident in the parts of the charter that deal with the nomination and election of the council.<sup>30</sup> In a number of instances cities have under-

<sup>28</sup> Cadillac, Charter, Chap. XI, Sec. 1. See also the charters of La Grande and Collinsville. The Texas proposal was made by H. G. James, first in his "Model Charter for Texas Cities" and later was incorporated in his *Applied City Government*, p. 72.

<sup>29</sup> For example for this change in attitude see the following charters: Amarillo, Tex., Sec. 20; St. Augustine, Fla., Sec. 30; also see the charters of Dayton, Springfield, and Sandusky, Ohio, and the general acts of Massachusetts and Iowa. Of course there are exceptions. In Jackson, Mich., the charter reads, "The city manager . . . may or may not be a resident or elector of the city at the time of his appointment, but other things being equal, preference shall be given to a citizen of Jackson." Sec. 55. In its advertisement for a city manager in 1912, Sumter, S. C., stated that "a knowledge of local conditions and traditions will, of course, be taken into consideration," but the choice fell upon a non-resident. In the charter proposed for Youngstown, Ohio, there was a notable departure from the usual custom. Five years residence as an elector was required of the "General Director." (Sec. 65.) This charter was not adopted. In Ashtabula, Ohio, the council acted "contrary to the spirit of the charter" and undertook to select one of its own number to act as city manager, and failing in this it chose a local resident without technical or other special qualifications for the place. These exceptions are, however, in marked contrast to the usual elimination of the residence feature.

<sup>30</sup> Cf. charters of St. Augustine, Fla., Sec. 30, and of Sandusky, Ohio, Sec. 31.



taken in a broad way to fix the standards by which the manager shall be chosen. Thus the St. Augustine charter reads "He shall be chosen solely on the basis of his executive and administrative qualifications;" the Massachusetts statute authorizes his selection "for merit only;" and the Iowa general act permits the council to consider "the qualifications or fitness only" of the candidates who apply. In Jackson, Michigan, the qualifications are defined as those of "a man of good business and executive ability, and, if practicable, a civil or mechanical engineer." The first Sumter advertisement announced that the applicant should be competent to oversee public works, that an engineer of standing and ability would be preferred, and that applicants should state their previous experience in municipal work.<sup>31</sup> In practice the applicants who have had technical training, especially in the field of engineering, seem to have commanded the attention of councils and a majority of the city managers may properly be called experts.<sup>32</sup> In addition to the technical qualifications indicated, the charters of Hickory, North Carolina, and of Cadillac and Manistee, Michigan, and some other cities require the manager to furnish bonds and to take the oath of office. Still other cities provide for the disqualification of managers who are interested in the profits of contracts, supplies, or service for the city. Cadillac prohibits its manager from holding any other public office, a feature which was also incorporated in the Youngstown proposals.

The manager is always chosen by the council or commission. The latter is usually free to adopt whatever measures it sees fit to enable it to perform its duty, and the methods which are familiar in private business when an important post is to be filled are frequently employed. Applications are secured from candidates by means of advertising, by personal solicitation, and by invitation to successful managers in other cities. In Taylor, Texas, it is provided that the manager shall be chosen "from among

<sup>31</sup> See the advertisement as reproduced in *Sumter City Manager Plan of Municipal Government*, published by the Sumter Chamber of Commerce, February and April, 1913.

<sup>32</sup> An examination of over a score of city managers indicates that more than half of them have had some engineering training. It should be observed, also, that a number of universities have undertaken to give training to men who aspire to places in municipal service.

all the candidates who apply to public advertisements.”<sup>33</sup> In the case of Sumter the local chamber of commerce coöperated with the council in its first attempt to find a manager.

The removal of a manager from office may be brot about in the following ways: (1) by the action of the council; (2) by the recall; (3) by the expiration of a fixed term. Of these methods the first is everywhere possible and is the feature of the plan which makes the council fully responsible for the kind of management secured. In the majority of cases the council's power of removal is unrestricted, the charters providing for its exercise “at will” or “at pleasure.”<sup>34</sup> In Phoenix, Arizona, there is no restriction on the exercise of the power of removal, but the manager is protected against attempts to oust him by indirect means by a provision that removal may be effected only by a majority of the commissioners “voting affirmatively therefor.” There is, moreover, a disposition on the part of some charter makers to limit this power. Thus, in Tyler and in Taylor, Texas, the removal power may be exercised without restriction only during the first three months of a manager's service; at any time after that date the manager may demand the filing of written charges and the holding of a public hearing before the commission prior to the order of removal going into effect. St. Augustine gives the council six months in which to act without restriction, and the model charter of the National Municipal League fixes the same period, both providing for written charges and a public hearing after the expiration of that length of time. The council, in the meantime, may suspend the manager until after the hearing is held and its decision reached. The purpose of the hearing is merely to throw the restraint of publicity about the action of the council, and apparently the latter's ability to take whatever course of action it may determine upon is not impaired.

The recall may be used against the city manager only in Dayton, and the conditions under which it operates are the same for the executive as for the members of the commission. The peti-

<sup>33</sup> Taylor, Charter, Art. 7, Sec. 2.

<sup>34</sup> Cf. the charters of Springfield, Ohio, Sec. 15; Sandusky, Sec. 31; Dayton, Sec. 47; Amarillo, Tex., Sec. 20; Hickory, N. C., Art. 6, Sec. 3, and many others. In La Grande, Ore., the charter permits the council to remove the manager “with or without cause.” (Chap. VIII, Sec. 4.)

tion for the recall election must be signed by at least twenty-five per centum of the total number of voters registered in the municipality. Precautions to assure the genuineness of the signatures and the form of the petition are provided for in the charter, and the details regarding the filing of the petition with the clerk of the commission, the notification of the manager, and the calling and conduct of the election are specified. In the event of a manager being recalled no successor is elected, but the place is to be filled by the commission. A majority of the votes cast at the recall election determine the result. If the vote be for removal, the manager "regardless of any technical defects in the recall petition," shall be deemed removed from office. There is a provision, however, which makes it impossible to file a recall petition within six months of a manager's appointment or six months of a previous recall election.<sup>35</sup>

The application of the recall to the manager has been one of the most severely criticised features of the Dayton charter. It forces upon the manager the duty of considering his standing before the people in the performance of work which the commission has ordered. It enables the electorate to override the commission instead of making it representative of the public will. Its presence in the Dayton plan is defensible only on the ground that its incorporation was a concession necessary to assure the adoption of the plan as a whole. It is significant that it has not been made a part of any of the city manager charters adopted since that of Dayton.

The removal of the city manager by the expedient of giving him a fixed term and thus reopening frequently the question of his retention obtains only in Tyler, Texas.<sup>36</sup> With respect to any other public office one would hardly count this a method for removing an officer, and with the majority of American municipal executives the fixed term is the rule. In the case of the manager plan, the fixing of a term of office is rare, and the only reason for its presence is to enable removal of a manager without resorting to the "right to fire" him. Indeed, the city manager is in almost all cases chosen for an indefinite term. As long as he gives satisfaction and chooses to remain his place should be

<sup>35</sup> Dayton, Charter, Secs. 13-20 inclusive.

<sup>36</sup> In Taylor the manager is chosen for a fixed period of two years. Cf. Beard, *Digest of Short Ballot Charters*, p. 36031.

secure. There is every reason to believe that many city managers will be able to render as long and acceptable service as have superintendents of schools in many cities.

In almost all the manager governed cities the salary of the chief executive is left to the determination of the council. This practice has not, however, met with universal approval, and the charter of St. Augustine fixes a minimum of three thousand dollars. The model charter of the National Municipal League recommends a like provision. A fixed minimum protects the city against a penny wise commission and guards the manager against petty attacks by a council that might hesitate to remove him. In Elizabeth City, North Carolina, Montrose, Colorado, and La Grande, Oregon, the charters prescribe that the salary of the manager shall not exceed a given maximum. Tyler, Texas, fixes both a maximum and a minimum figure, the one at thirty-six hundred dollars and the other at eighteen hundred. Phoenix, Arizona, permits the council to change, increase, or modify by ordinance the salary of the city manager "as it may deem proper and necessary."

Vacancies in the managership are usually filled by action of the commission. This is always true of permanent vacancies, but in case of absence, disability, or suspension, and vacancies of a temporary character there are different methods of providing for the conduct of administration. In the majority of cities the council is authorized to "designate some properly qualified person to execute temporarily the functions of the office of city manager." In Taylor, Texas, the commission selects one of its own members to act as manager. Jackson, Michigan, gives to the manager the power to name one of his subordinates as assistant manager. The latter becomes the acting manager in case of temporary vacancy "unless the commission provides otherwise."

Few other features are discernible in the constitution of the manager's office. The tendency has been to slough off many of the provisions that had gathered about the mayoralty in the course of its development and to simplify the structure of the executive as well as the other organs of municipal government. The results in the mere simplification of machinery in the manager plan constitute no small part of its claim to public attention and favor.



*The Manager and Administration*

The relation of the city manager to the administration of the affairs of the municipality is the subject of careful and detailed definition in manager charters. In a general way the manager is the executive head of the government, is responsible for the efficient conduct of the departments and divisions, and exercises control over them.<sup>37</sup> This relation is occasionally modified by provisions which make possible the interference and direct action of the council,<sup>38</sup> but in some cases the manager is expressly protected against such activity on the part of the council, the latter being obliged to deal with matters of administration thru him.<sup>39</sup> The organization of the administration is usually determined in the charter or left in the hands of the commission, but the manager is still in a position to influence and modify the plans. In Dayton the commission appoints advisory administrative boards "on request of the city manager." In Springfield, St. Augustine, and Cadillac the manager is the head of all departments except those otherwise provided for by the charter, while in Wheeling, West Virginia, he appoints "such officers . . . as are necessary or proper" to make the authority of the city, the council, or the manager effective and grants to his appointees the power necessary to perform the duties assigned to them. His appointive power is usually broad and extends to all municipal employees except those few such as clerk, treasurer, and municipal judge, reserved by the charter to the commission.<sup>40</sup> This practice with respect to appointments is modified in some cities. Amarillo, Tyler, and Taylor, Texas, and Jackson, Michigan, make the manager's appointments subject to the approval of the council. Frequently the appointees must be named from an eligible list prepared by a civil service commission as in Dayton, San Jose, California, and for certain departments in Wheeling. On the other hand the majority of manager governed cities

<sup>37</sup> See charters of Dayton (Sees. 47 and 48), Springfield (Sec. 16e), Taylor (Art. 9, Sec. 1), Hickory (Art. 6, Sec. 1), Manistee (Art. 6, Sec. 10), and the statutes of Massachusetts, New York, Iowa, and Virginia.

<sup>38</sup> Cadillac, Charter, Chap. XI, Sec. 1 and 4e.

<sup>39</sup> St. Augustine, Charter, Sec. 10.

<sup>40</sup> Cf. charters of Dayton, Sandusky, Montrose, Phoenix, and others. In La Grande, Ore., the appointing power of the manager is "absolute." Charter, Chap. VIII, Sec. 4.

do not maintain a civil service commission, tho it would seem to be eminently desirable in places of any considerable size as a means for assisting the manager to learn of the qualifications and fitness of applicants for positions. In contrast with those cities that require confirmation of appointments by the council stands the provision in the St. Augustine charter that neither the commission nor any of its members shall "dictate the appointment of any person to office or employment by the city manager or in any way prevent the city manager from exercising his own judgment in selecting the personnel of his administration." A few charters, notably those of Amarillo and Montrose, seek to guard against nepotism, the former by prohibiting the city manager from appointing any person "related within the second degree by affinity or the third degree by consanguinity to either of the commissioners, or to the city manager."<sup>41</sup>

Altho the power of appointment is usually vested in the manager, there are exceptions, as in the city of Hickory, North Carolina, where the council appoints or elects the municipal employees for a term of one year. The manager, however, is authorized to supply the council with lists of names from among which the council may choose. In case one list does not satisfy the council may call for as many other lists as it desires.<sup>42</sup>

Along with the power to appoint, the manager is frequently empowered to suspend, remove, or dismiss, and otherwise to discipline members of the municipal service. The exercise of these powers is carefully supervised either by the council or by the civil service commission. Thus in Dayton, the manager may remove officers appointed by him, except that in the classified service removals are subject to an appeal to the civil service commission, a body appointed by the council. The power of suspension is vested in the city manager of Dayton exclusively when exercised with respect to the chief of police and the fire chief. In Cadillac, Michigan, he may suspend any appointive officer "for any just and reasonable cause" including a number of specified offenses such as neglect of duty, drunkenness, and the

<sup>41</sup> Amarillo, Charter, Sec. 30. The Montrose provision is less specific, providing simply that the manager "shall not appoint any relative of his own to any office of trust." Sec. 36.

<sup>42</sup> Charter, Art. 6, Sec. 12. See also the charter of Manistee, Mich., and the explanatory note in Beard's *Digest*, p. 35017.

like.<sup>43</sup> La Grande, Oregon, gives its manager "absolute control and supervision over all . . . employees of the City except the Commissioners and Municipal Judge," including the power to appoint all other officers prescribed by the charter and to employ "such additional help as may be necessary" and "to discharge, with or without cause, any person appointed or employed by him."

The manager's powers of appointment and removal are unquestionably vital features of the plan. In a recent discussion of the professional standards which should characterize membership in the City Managers' Association, the requirement was proposed that members must come from cities operating under approved charters and one of the things for which an approved charter must provide was the manager's appointive power with respect to all city departments.<sup>44</sup> That it may be necessary "for some years" to have the protection which the civil service system offers in the matter of appointments is admitted, by Manager Waite of Dayton. On the other hand the power to dismiss subordinates absolutely is held by many managers to be essential to efficiency. "If you are going to look to an executive for results, he must and should have the power of dismissal." On the other hand anyone familiar with municipal conditions in the United States will recognize that in the exercise of the powers of appointment and removal the manager system will face one of its gravest tests. The disposition of councils to interfere with the appointments made by managers has already been evidenced in Sandusky, Ohio, and some other cities.<sup>45</sup> On the whole, man-

<sup>43</sup> With respect to officers and members of boards and commissions that are not included within regular departments the removal power of the manager of Cadillac is absolute. The power of suspension noted above is exclusive with respect to all other officers, except the few selected by the commission. Charter, Chap. XI, Secs. 5 and 8.

<sup>44</sup> See proposals in a paper by Mr. Richard S. Childs on "Professional Standards and Professional Ethics in the New Profession of City Manager," *National Municipal Review*, Vol. V, p. 197 (April, 1916). This feature was not approved.

<sup>45</sup> See the discussion of the situation in Sandusky in *National Municipal Review*, Vol. V, p. 383. The commission in this case justified its action in removing some of the manager's appointees on the ground that he had fallen with those who were "out of sympathy with the ideals of the people" and had made his appointments "without consulting the commissioners." Consequently it becomes "the imperative duty of the commission to supervise his

agers appear to look with favor upon such assistance as the civil service can render in securing qualified candidates for appointment; opinion is divided with regard to activity on the part of the council. Some believe under such circumstances a manager should retire; others believe that if a community is not ready for "a non-political set of appointments" a manager must stay his hand, get along the best he can, and bide his time. He is the servant of the municipality as represented in its council and should make non-political appointments only when he can make such a course seem worth while to those who employ him. Generally speaking, however, one must agree with the view that communities which cannot vest their managers with broad powers of appointment and removal "are not ready for the ideal;" doubtless also such communities should proceed cautiously before adopting a form of government as simplified and advanced as is the manager plan;<sup>46</sup> on the other hand the establishment of improved conditions in administration and the elimination of spoils politics are goals to be won only by degrees, and in the winning of them the municipal manager will assist more effectively by the patient and tactful education of the public than by ultimata threatening resignation if his powers of appointment and removal are not recognized. The successes which the manager plan has already achieved have not always been realized under conditions which admitted of the unrestricted exercise of the powers in question, but this fact by no means impairs their claim to importance.

The manager's powers of appointment and removal are sometimes accompanied by the right to fix the compensation of employees, subject to the approval of the council.<sup>47</sup> Limitations provide that the rates of pay shall be uniform for like service in each grade of the service.<sup>48</sup> He is also empowered to require and to fix the amount of bonds of appointees.<sup>49</sup>

appointments," p. 384. From an article on "Some Recent Uses of the Recall," by F. S. Fitzpatrick. Phoenix, Ariz., and Niagara Falls, N. Y., are other examples.

<sup>46</sup> See report of a discussion by Manager Waite of Dayton on the manager plan, *New York Times*, March 9, 1916.

<sup>47</sup> Cf. the charters of Wheeling (Sec. 14), Montrose (Secs. 36, Par. 1), and Dayton (Sec. 131).

<sup>48</sup> Dayton, for example, Charter, Sec. 161.

<sup>49</sup> Cf. Wheeling, Charter, Sec. 14, and Dayton, Charter, Sec. 162.



Naturally, the city manager has extensive authority to investigate the conduct of subordinate officers of administration. There are but rare exceptions to the bestowal of this power and few limitations upon it.<sup>50</sup> The authority is usually complete, including the right to investigate without notice, to conduct examinations under oath, to compel the attendance of witnesses and the production of evidence, books, accounts, etc., to punish for contempt, and to delegate his power in these particulars to persons selected by him to conduct such investigations for him.<sup>51</sup> In Dayton the city accountant is required to make for the manager an examination of the accounts of any office vacated by death, resignation, removal, or the expiration of the incumbent's term. In Bakersfield, California, it is one of the duties of the manager to investigate all complaints in regard to public utility services and to take the steps necessary to correct abuses. The power of investigation constitutes one of the most essential features of a managership that is worthy of the title and that aspires to useful and effective service. It is necessary if the responsibility of the executive is to be thoroly established.

The control of the manager further extends to the power of requiring information and reports, either orally or in writing, from his subordinates and from other municipal officers. Such reports are expected at stated intervals, and may be demanded on such other occasions as the manager may direct. Where the manager is not responsible for the conduct of all the departments, such as the department of law, the charters sometimes specify that he may require the submission of opinions or other data.<sup>52</sup>

One of the most important duties imposed upon the city manager is the exercise of his power of approval. Matters from the departments come before him continually, the extent of this power in actual practice depending, of course, upon the disposi-

<sup>50</sup> In Hickory, N. C., the manager is not authorized to investigate the books of the city treasurer.

<sup>51</sup> See the charters of Dayton (Sec. 50), Springfield (Sec. 88), St. Augustine (Sec. 211), Manistee (Art. 6, Sec. 16), Cadillac (Chap. XI, Secs. 8 and 10).

<sup>52</sup> Cf. the charters of St. Augustine (Sees. 35 and 38) and Dayton (Sec. 58).

tion of the particular individual who is manager. There are some things, however, with respect to which the charters require the approval of the chief executive. For example, some cities provide that he must countersign all vouchers for the payment of claims against the city, or that he shall countersign and approve all orders for the purchase or sale of supplies.<sup>53</sup> In Springfield, Ohio, contracts in excess of a given sum, usually one hundred, five hundred, or one thousand dollars, are valid only upon the approval of the manager. Any modification of the terms of a contract may be effected only with his consent. In Taylor, Texas, the charter provides that the board of commissioners shall not act on any matter of administration without first asking the opinion in writing of the city manager, thus making the matter of his approval or disapproval a consideration of primary importance, even tho it is not binding upon the legislative organ.

Frequently the manager is, by charter enactment, a member of important municipal boards or commissions or holds certain offices *ex officio*. He is one of the three members of the board of review of assessments and one of the seven trustees of the sinking fund in Dayton. The manager of Springfield is also platting commissioner and budget commissioner of the city. St. Augustine's charter evidences the influence of the Dayton plan in that the manager is made a member of the equalizing board, and as in Springfield he is also superintendent of plats. In both of the latter cities he is made the purchasing agent of the city, a practice that obtains also in Elizabeth City, North Carolina, and in Montrose, Colorado.

In some of the departments the manager has special powers and responsibilities. The charter laws very often lay upon the manager the duty of seeing that the laws and ordinances are enforced.<sup>54</sup> Thus special emphasis is sometimes laid upon his

<sup>53</sup> See the charters of St. Augustine (Sec. 91), Dayton (Secs. 80 and 85), and Amarillo (Chap. XXVI).

<sup>54</sup> *Cf.* Dayton, Charter, Sec. 48(a); Springfield, Charter, Sec. 16(a); Sandusky, Charter, Sec. 16(a); St. Augustine, Charter, Sec. 33(a). In Bakersfield, Calif., the manager must see that the laws and ordinances are "faithfully enforced by the heads of the departments." Charter, Sec. 36, Par. 1. In Phoenix, Ariz., the manager shares the duty of enforcing the ordinances with the mayor. Charter, Chap. VI, Sec. 2.

control of the department of public safety which includes the divisions of police and fire protection. In Dayton the manager determines the composition of these divisions and has the exclusive right to suspend their chiefs pending a hearing by the commission. Cadillac gives its manager exclusive control of the stationing and transfer of all members of the police and fire forces, subject only to such rules and regulations as the council may lay down. Jackson places its manager in "active control" of the departments of police and fire. The effectiveness of the manager's authority to enforce the laws and ordinances is increased in Cadillac and Manistee by his power to revoke or suspend licenses.

The relation of the manager to the department of finance is, of course, intimate, and his duties in this connection bring him into close contact with every part of the administration. The investigation of accounts, the approval of claims, purchases, sales, and contracts, the revision and equalization of assessments, and other duties have already been mentioned. In reality, however, his relation to municipal finance is even more important than the foregoing would indicate. He must make frequent reports to the commission and be prepared to inform it regarding the finances and the future needs of the municipality. These reports are made weekly in some places, monthly in others, or at the request of the commission; and annual reports are expected in all cases. Of greater significance is the work of preparing and defending the annual budget.<sup>55</sup> This task involves familiarity with all the details of the city's finances and an intelligent appreciation of the departmental needs and services. The Dayton charter provides that the estimates "shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager." In practically all cases the budget is presented to the council, but in Bakersfield it is submitted to the auditor.

The miscellaneous duties which the manager is called upon to perform are almost as imposing in number and variety as those which pertain to the mayoralty. Charters frequently provide

<sup>55</sup> Cf. Dayton, Charter, Sec. 156; Springfield, Charter, Sec. 86; also the charters of Sandusky, Ohio, Manistee and Jackson, Mich., Taylor, Tex., and the general acts of New York and Virginia.

that in addition to the duties and functions listed within their limits the manager shall perform such others as may be required by ordinance or resolution of the municipal council.<sup>56</sup> Many are specified in the charters that are more or less miscellaneous in character and of no little importance and interest. In Dayton and St. Augustine the manager serves notices on property owners involved in commission resolutions regarding the repair of sidewalks, curbings, and gutters, the vacating of streets, and condemnation proceedings. In the latter city he distributes the rebates due property owners from the unexpended surplus in special assessment funds. He is required to prepare and display publicly the plans of proposed improvements, together with data and information relating to them. Springfield, Bakersfield, and Montrose expect him to see that the obligations of public utility corporations operating under franchise grants are faithfully observed. Montrose places in his hands the issuance of building permits, the care of city tools and property, and the work of advertising for bids on supplies; Phoenix empowers him to see to the performance of all contracts; Cadillac entrusts him with the management of all charitable, correctional, and reformatory institutions and agencies, the supervision of weights and measures, the keeping of a "complete and accurate system of vital statistics and the enforcement of health, sanitary, and quarantine regulations of every kind." The Iowa general act and the charters of Cadillac and Jackson lay special emphasis upon his management and supervision of all public improvements and enterprises. Clerical and ministerial duties such as the signing of all public documents, licenses, contracts, etc., specified by the commission are enumerated in the charters of Manistee and Cadillac. La Grande expects the manager to see that the business affairs of the corporation are transacted in "a modern scientific and businesslike manner and the services performed and the records kept" to be "as nearly as may be like those of an efficient and successful private corporation." In Collinsville, Oklahoma, he is vested with the judicial power and authority of the city, and in Cadillac and some other cities he may sign warrants and cause arrests. To fill the cup of his authority he is occa-

<sup>56</sup> For example of this blanket provision see Springfield, Charter, Sec 16(h).



sionally authorized to "exercise and perform all other executive and administrative functions and duties" not provided for by the charter or by the commission.<sup>57</sup>

The justification for the concentration of executive and administrative authority which the manager enjoys is threefold: the manager is immediately and continuously responsible to the representative council; the legislative and administrative functions of the municipality are separated from each other, and the confusion resulting from a system of checks and balances is eliminated; <sup>58</sup> and the introduction of trained and expert department heads and of capable employees in subordinate positions is encouraged and facilitated. There can be no question but that in communities where intelligent coöperation, sympathy, and support are accorded this type of administrative organization the results achieved tend to compare very favorably with the best that has hitherto been achieved under either the mayor or the commission plans. On the other hand the possibility that the manager form "might prove to be susceptible to perversion in the interest of a boss in cities with an undeveloped and inactive public opinion" has led the friends of the manager plan to urge caution in its adoption and the National Municipal League to insist that none of the other principal features of the plan be omitted if the administrative provisions are adopted.<sup>59</sup>

### *The Manager and Legislation*

The relation of the city manager to legislation is much more simple than is that of the mayor or the mayor-commissioner. In the manager plan the council is at once the organ for the determination of public policy and the judge and critic of the manager and of his conduct of the administration. It is a restored and powerful representative body. But despite this renaissance of the council the manager retains an influence in legislation that is far from inconspicuous. Tho he enjoys no vote as does the mayor-commissioner, and no veto as in the case of the mayor, he finds still open to him the more important and useful avenues of executive participation in the initiation and enactment of legis-

<sup>57</sup> Jackson, Charter, Sec. 33(f); Cadillac, Charter, Chap. XI, Sec. 4.

<sup>58</sup> Cf. comment by Manager H. M. Waite of Dayton, quoted in the *New York Times*, March 9, 1916.

<sup>59</sup> *A Model City Charter*, etc., p. 29, note 12.

lation. His power to initiate legislation is threefold: he may call meetings of the council or commission; he may submit recommendations; and he prepares and submits the annual budget. His power to call meetings of the council is usually expressed in the charter and is shared by the mayor or president or by a fixed number of commissioners. The method of making the call effective is not always incorporated in the charter provisions, but in Dayton, St. Augustine, and some other cities, the members of the council must be served with written notice, either personally or by messenger at their respective residences at least twelve hours in advance. In Amarillo, on the other hand, the manager may call the meetings "at any time deemed advisable." The model charter of the National Municipal League does not confer this power on the city manager but leaves the matter of calling special meetings with the council to be "prescribed by ordinance."

The manager's power to make recommendations is recognized in the great majority of charters, and in most of them its exercise is couched in directory language. The form which the recommendations shall take is rarely specified, but in Amarillo they are to be "in writing." The value of this provision is somewhat enhanced by the requirement, generally made, that all meetings shall be public and the privilege of access to the minutes and records of the council vouchsafed to any citizen.<sup>60</sup> The right of the manager to introduce proposals is not generally provided for in express terms, but it is frequently the practice to supplement recommendations with measures already drawn and ready for consideration and action. This course is provided for in the charter of Cadillac, the manager being authorized to "draw up resolutions and ordinances for adoption by the commission" and to "introduce" them before the commission. Perhaps, however, the most important function of the manager in connection with the initiation of legislation is that of submitting the annual budget. This does not involve the preparation of the annual appropriation bill, but it does include the recommendations of the manager as to the amounts to be appropriated, together "with the reasons therefor." The estimates as prepared and the manager's recommendations are open to the inspection of the public and following the preparation of the appropriation ordi-

<sup>60</sup> For example, Dayton, Charter, Sec. 39.

nance by the commission and prior to its adoption, the ordinance is published, together with a parallel comparison of the proposals made by the manager. In some cities as much as ten days must elapse after publication before the ordinance may be adopted, and it is obvious that in the majority of cases the council will hesitate to alter the manager's estimates materially, unless there be sound reasons for such action.

The power of the manager to participate in the enactment of legislation is limited to his having a voice in discussions on matters before the council for consideration. The vote is expressly denied to him by many charters, thus differentiating him from most other municipal executives in this country. The right to be heard is of the utmost importance and is generally bestowed.<sup>61</sup> Exception to the manager's presence when the council is considering his removal is made in the model charter proposed by the National Municipal League, but this document goes further than those already in operation in that it provides that the manager may meet with all sessions of council committees as well as with the council, and may discuss with such committees matters under consideration by them. In Taylor, Texas, the board of commissioners may not act on measures which affect administration without first securing the written opinion of the manager. From whatever angle one may view this power of making his opinions known, whether in oral discussion or in written statements, one must recognize its potency. The manager's intimate knowledge of conditions, his grasp of the effect of measures and policies upon all branches of the public service, and the experience which he will in time have acquired in the organization and presentation of his material cannot fail to gain for his opinions a degree of recognition and a measure of approval which will rival the success of even the strongest mayors. The manager's attendance upon all meetings of the commission is almost always made one of his duties. His presence operates to make him an active and influential factor in legislation, especially where his record in the service of the municipality has won for him the respect and loyalty of the community. His judgment will rarely be considered lightly.

<sup>61</sup> Cf. charters of Dayton, Springfield, Cadillac, Jackson, St. Augustine, Montrose, Amarillo, for examples of the bestowal of the right of discussion.

*Conclusions*

There is no doubt but that the manager plan is firmly established in this country as one of the three main types of city government. Of course it is altogether too early to judge of its ultimate place in the municipal life of American cities. Under unfavorable conditions it has registered a record of success and an increase in efficiency that has commanded for it the attention and respect of all who are interested in the improvement of city government and politics. Not all of the problems that are called into being by the appearance of the expert executive have been solved. His relation to the commission has been easier to outline in charter law than to establish in practice and will ultimately be defined only under the pressure of experience. To keep the manager in the background and out of politics and the commission in the foreground where the public eye may follow its every act will be a most difficult and persistent undertaking. The development and maintenance of the active and intelligent public interest in governmental affairs that is essential to the success of the manager plan as well as to any other will be achieved only by degrees. Yet despite these and other difficulties the city manager plan is undoubtedly of great promise. It has been received with enthusiasm by students of political theory as embracing sound principles of government organization. Its entry into the field of city government has been opportune. It has the endorsement of the National Municipal League in its model charter. Already its impact has been felt by the older forms of organization. The administrative system which it incorporates seems to be capable of indefinite development and expansion and therefore qualified to be successfully applied in the large cities, thus coming into effective competition with the mayor system at the point where the commission plan has made the least impression.

The advocates of the respective executive types described in this work are not wanting either in arguments or in enthusiasm. Especially is this true of the commission and the manager plans. It is hardly to be expected, however, that the enthusiasm for a product of long and evolutionary development, such as the mayor plan, could rival that displayed in behalf of plans of more recent devising, lacking as they are in records of conspicuous failure. On the one hand it is said that "there should be no mayor of the



old-fashioned sort," a "chief official having both deliberative and executive powers, and elected at the polls" — "he should not exist."<sup>62</sup> On the other it is said that under commission government there "would often be found one man who would dominate . . ." and that the "tendency, therefore, is strongly toward one-man government," government by a "city autocrat."<sup>63</sup> From another work one learns that the tendency of commission government to invest the elective official "with active managerial functions is an unwise inclination toward the Jacksonian doctrine of the popular election of administrative officials."<sup>64</sup> The principal objections to the manager form are that it does not admit that there are "good men in every locality capable of administering the government of the city,"<sup>65</sup> and that it presumes standards of public life and citizen activity that do not obtain in the average city. As to the validity of these views regarding the municipal chief executive the reader is left to judge. The writer views with favor and hopefulness the future spread of the manager type, the expert executive responsible to a representative council. Certain it is, however, that no revolution is impending that will sweep away the mayoralty or the mayor-commissionership. In the evolution of municipal democracy toward higher ideals and nobler achievements in government, the type of executive organization which proves fit will survive and endure; and in a world which bears witness to the adaptability and permanence of differing forms of governmental organization it would be idle to prophesy the ultimate passing of any one of the three types studied in the preceding pages. Rather, one may reasonably expect that each of them will, under varying conditions, and with divers modifications, develop into agencies adequate for the tasks, responsibilities, and purposes with which they are charged.

<sup>62</sup> "The City Manager Plan with Proportional Representation, otherwise called The Representative Council Plan," by C. G. Hoag. Found in Beard, *Digest of Short Ballot Charters*, p. 21305.

<sup>63</sup> Report of the Royal Commission on Municipal Government, British Columbia, 1912, published at Victoria, 1913, p. 6.

<sup>64</sup> Ryan, Oswald, *Municipal Freedom, a Study of the Commission Government* (New York, 1915), p. 99.

<sup>65</sup> Toulmin, H. A., *The City Manager, A New Profession* (New York, 1915), pp. 262, 263.

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UNIVERSITY OF ILLINOIS STUDIES  
IN THE  
SOCIAL SCIENCES

VOL. VII

DECEMBER, 1918

No. 4

BOARD OF EDITORS

ERNEST L. BOGART

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PUBLISHED BY THE UNIVERSITY OF ILLINOIS  
UNDER THE AUSPICES OF THE GRADUATE SCHOOL  
URBANA, ILLINOIS



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# The Journeymen Tailors' Union of America

A Study in Trade Union Policy

CHARLES JACOB STOWELL



## PREFACE

In the writer's *Studies in Trade Unionism in the Custom Tailoring Trade*, published as a Master's thesis in 1913, is found an account of the rise and growth of tailors' unions in England and America, also material dealing with the economic history of the tailoring trade, and with recent conditions in this trade, including statistics of the present national union. The present thesis is a continuation of studies in the same general field, and is designed to give an account of the policy of the Journeymen Tailors' Union of America on the subjects of collective bargaining, helpers and apprentices, and jurisdictional questions. The policy of the union is first considered with reference to the interests of the journeymen tailors themselves, but in the concluding chapter an effort is made to indicate the most important consequences of this policy upon the industry at large and upon the consumer.

The officers and members of the Tailors' Union have been of great assistance in the preparation of this study, especial thanks being due to Mr. Thomas Sweeney, secretary of the union, and to Messrs. John B. Lennon and E. J. Brais, former secretaries. The writer also wishes to express his appreciation of criticism and advice given by members of the Economics Seminar, University of Illinois.

CHARLES JACOB STOWELL

University of Illinois  
May, 1917





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by referendum votes; attempt in 1913 to amalgamate all clothing workers' unions; dissolution of the amalgamation; present status of the amalgamation question; conclusions.

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## INTRODUCTION

### *Historical Sketch of Tailors' Unions in America*<sup>1</sup>

The journeymen tailors were among the first tradesmen in America to organize. There was a strike of tailors in Baltimore in 1795, and again in 1805.<sup>2</sup> By 1806 there were at least three tailors' societies—one in Philadelphia, one in New York and one in Boston.<sup>3</sup> Between this date and the Civil War a number of other local societies of tailors were organized, and enjoyed a more or less continuous and successful career. In Buffalo in 1824,<sup>4</sup> and in Philadelphia in 1827,<sup>5</sup> the tailors were involved in interesting conspiracy trials. A similar trial growing out of a tailors' strike in New York City in 1835 had important political consequences, which were closely connected with the general workingman's movement of about that date.<sup>6</sup> The labor movement among the tailors appears in most respects to have followed the trend of the movement in general during the years 1825-1860, although there is no evidence that the tailors took part in the temporary attempt at national federation of trade unions in

<sup>1</sup> This sketch in the main is condensed from material in the writer's *Studies in Trade Unionism in the Custom Tailoring Trade*.

<sup>2</sup> McMaster, *History of the People of the United States*, vol. III, p. 511.

<sup>3</sup> The Philadelphia union is stated to have been the first by the Colorado Commissioner of Labor, who probably obtained his information from officers of the Tailors' Union in Denver. The Philadelphia union was composed mainly of English tailors, who until its organization had retained their membership in English unions. (Colo., *Biennial Report of the Bureau of Labor Statistics*, 1899-1900, p. 336.) The New York union is vouched for by Professor Carlton (*History and Problems of Organized Labor*, p. 17), and the Boston union by its present officers and members, who celebrated the Centennial in 1906 (*Tailor*, November 1906, p. 17).

<sup>4</sup> *Documentary History of American Industrial Society*, vol. IV, pp. 93-95.

<sup>5</sup> *Ibid.*, vol. IV, pp. 99-264.

<sup>6</sup> *Ibid.*, vol. V, Introduction, pp. 36-37.



1834-1837.<sup>7</sup> We must turn to a later date for the real beginning of the national movement on the part of the tailors.

The first national union of tailors of which we have any record was formed in 1865 in Philadelphia, and was known as "The Journeymen Tailors' National Trades Union."<sup>8</sup> The convention at which this union was founded was composed of delegates from the following cities: New York, Philadelphia, Washington, Worcester, Troy, Cincinnati, and Louisville. The union held conventions every year from 1865 to 1876 inclusive, but disintegrated after 1876, largely on account of the embezzlement of the funds by an officer in 1875.

A period now ensued of about seven years, including a part of 1883, during which there was no national union in the tailoring trade. The local unions, however, continued their activity, and we have the record of strikes in several localities widely separated.<sup>9</sup> In 1883 the national movement was resumed on the initiative of the Philadelphia local, which issued a call for a convention to meet in that city the second Monday in August, 1883. Five local unions responded: Philadelphia, New York, Troy, Baltimore, and Pittsburgh. Officers were elected and constitution and by-laws adopted.<sup>10</sup> The new organization was entitled "The Journeymen Tailors' National Union of the United States." This union, with some changes of title, has existed continuously until the present date.

In the first few years following the organization of the union

<sup>7</sup> For a good summary of the period 1825-1840, cf. Andrews and Bliss, "History of Women in Trade Unions," p. 21, in *Report on Condition of Women and Child Wage Earners in the United States*, vol. X; and for the period 1840-1860, *ibid.*, p. 53.

<sup>8</sup> The term "national union" in 1865 appears to have been used to describe the convention or delegate body rather than the aggregate of all the affiliated locals and members. Cf. the following from the constitution adopted in 1865, Art. 2, sec. 1: "The members of the National Union shall be composed of its elective officers, and representatives from local unions."

<sup>9</sup> Boston, Cincinnati, Pittsburgh, New York, Dubuque, Washington, Denver, Des Moines, Freeport (Ill.), Philadelphia.

<sup>10</sup> It is possible that this constitution and by-laws were not printed. The writer has relied for his account of the convention upon an article written in 1893 by one of the delegates, and the earliest constitution of the present national union that he has seen is dated 1884.

it succeeded in affiliating nearly all detached locals already in existence,<sup>11</sup> and continued to organize new locals as opportunity presented. Beginning in 1883 with five locals and about 1800 members, by 1893 it had acquired a strength of 200 locals and 10,200 members. In 1897, however, the next date for which statistics are reported, the number of locals was only 181, and the membership had decreased to about 5,700, the decline being due primarily to the effects of the panic of 1893.<sup>12</sup> In 1899 a slight recovery of membership was noticeable, and by 1901 the union had regained nearly the same strength as in 1893. From 1901 to 1904 progress was rapid, and on January 1, 1904, the maximum membership of about 16,000 was reached.<sup>13</sup> although the maximum number of locals, 331, was not reached until 1907. Following 1907 there was a decline, both in the number of locals and in the number of members, which was due in part to financial depression, and in part to the rise of cheap systems of custom tailoring outside of union jurisdiction.

Since 1909 the membership has been about stationary, ranging from 12,000 to 13,000, the decline being arrested by a more vigorous organizing policy<sup>14</sup> and by the determination of the Tailors' Union to organize workers on the cheaper systems. The latest report (June, 1916)<sup>15</sup> indicates that there were on this date 283 local unions in good standing, located in 272 different cities in the United States and Canada,<sup>16</sup> and containing about

<sup>11</sup> For a list of 53 local unions of which a record has been found as existing prior to the organization of the present national union, *cf.* Stowell, *op. cit.*, pp. 58-59. To this list should be added the union in Madison, Wis., which was in existence as early as 1864. *Cf.* article by R. N. Qualey, in *The Tailor*, September, 1906, p. 8.

<sup>12</sup> One of the effects of the panic was the almost complete loss to the national union of the New York local, which withdrew after a disastrous strike in 1894 to resist a reduction in wages, and did not reaffiliate until September, 1903.

<sup>13</sup> This maximum corresponds very nearly in date with the reaffiliation of the New York local.

<sup>14</sup> The average annual expenditure for organizing purposes from 1909 to 1915 was \$23,956.94, as compared with \$13,769.98 for the period 1903-1909.

<sup>15</sup> Furnished to the writer by Secretary Sweeney.

<sup>16</sup> Two cities, Chicago and New Haven, contained each three local unions, and each of the following cities contained two local unions: Toronto, Buffalo, Boston, Pittsburgh, Washington, Denver, and San Francisco. In

13,000 members. New York, with 1,606 union members,<sup>17</sup> and Chicago, with 1,134, were the only cities containing more than 1,000 members. Ten cities contained 200 to 1,000 each, and ten cities 100 to 200 each. The remaining 250 cities contained less than 100 members each, although many of them are large cities. This is an important commentary on the relative scarcity of skilled journeymen tailors, as well as the comparatively low per cent of organization in some communities—matters which will engage our attention more fully in the body of the thesis.<sup>18</sup>

the cities containing more than one local union the pressers, dyers and cleaners are organized in separate locals, and in one or two cases the bushelmen.

<sup>17</sup> Since the June, 1916, report the membership of the New York union has been reduced to less than 1,000 as the result of an unsuccessful strike.

<sup>18</sup> Cf. *infra*, Ch. I, pp. 24-26, and Ch. II, pp. 78-81.

## CHAPTER I

### COLLECTIVE BARGAINING

In the present chapter the most important problems connected with collective bargaining in the custom tailoring trade will be taken up under topical heads and analyzed with reference to the policies and practices of the Journeymen Tailors' Union and its affiliated locals.

#### 1. METHODS AND TERRITORIAL EXTENT OF BARGAINING

All negotiations with employers are carried on by representatives of the local or national union, and in no case by the individual members. This policy is clearly laid down in the constitution.<sup>1</sup>

In small cities, and in small shops in large cities, there is generally no shop organization, and in such cases, if the tailors working in any shop wish to take up demands or grievances with their employer, they can bring the matter informally to the attention of the local union, which will then take the responsibility for further negotiations. Negotiations on behalf of the local union may be carried on by a standing committee or by a committee appointed for the occasion. Where the local union employs regularly a local organizer or business agent, this officer ordinarily takes charge of the negotiations, assisted by the committee. If an organizer of the national union is present he will act in an advisory capacity to the local officers and committees, and by action of the local union may be given charge of negotiations, with a status similar to that of the local business agent. It should be understood that in all of these cases the local union must approve the final settlement.

In large shops in the large cities there is frequently a shop organization known as the "shop meeting." Business affecting

<sup>1</sup> 1914, Secs. 79, 95, 131, and 153.



a given shop is transacted by the shop meeting, subject to the approval of the local union. In New York City, while mass meetings of all the members are called from time to time, a great deal of the business of the union is transacted by a delegate body composed of representatives from the several shop meetings.<sup>2</sup> Where shop meetings exist, therefore, negotiations with employers will frequently be handled through the shop meetings affected. If more than one shop is affected, but the demands are uniform in all, the different shops or shop meetings may in some cases form a conference committee to deal with a like committee from the employers. If the demands are not uniform, but different demands are to be presented in several different shops, there is usually some basis of classification, the demands being uniform for shops of a certain class; in this case there will sometimes be a conference committee of employees and of employers for each class of shops. Just what method of handling negotiations will be employed in each case will depend on circumstances, and will be governed in part by the kind of organization and the arrangements with respect to officers and committees prevailing in the local union.

In cases of negotiations involving all shops, or at any rate all union shops, in a city, negotiations on the employers' side are sometimes carried on by a committee representing the local employers' association, or Merchant Tailors' Exchange, as it is usually called.<sup>3</sup> But this is not customary except in the larger cities. Where the merchant tailors are not organized, negotiations affecting all of the shops present no unusual features, unless the matter comes to a strike, in which case the merchant tailors often organize temporarily to safeguard their interests.

The Tailors' Union takes a favorable attitude toward carrying on negotiations with the local employers' associations. As early

<sup>2</sup> Some of the earlier issues of *The Tailor* contain lists of the shop meetings in large cities. For example, in 1891, there were 59 shop meetings in New York City, which met every week; and in Chicago there were 15 shop meetings, meeting usually every two weeks. *The Tailor*, May, 1891, inside back cover.

<sup>3</sup> Secretary Samuel H. Spring of the National Association of Merchant Tailors says in correspondence with the writer: "Some of the local associations do have committees whose duty it is to care for strikes or disputes."

as 1889 Secretary Lennon<sup>2</sup> advocated conference committees of the unions on the one hand and of the employers' exchanges on the other, for the purpose of avoiding strikes;<sup>5</sup> and in 1909 the convention and the membership adopted a resolution to the same effect.<sup>6</sup>

It has been impossible to bring about arrangements between the Tailors' Union and the national employers' associations for national conferences for the adjustment of disputes. In the early days of the Tailors' Union there was no apparent hostility between the employers' organization, then known as the Merchant Tailors' National Exchange,<sup>7</sup> and the union. On the contrary, there appeared to be some grounds for coöperation, particularly in connection with tariff laws which were regarded as injurious to the trade, and with regard to the importation of English-made clothing, which required to be altered to fit American styles, and which the American journeymen had more than once refused to alter.<sup>8</sup> In fact, representatives of the union took part on several occasions with representatives of the employers in conferences, and in one case in a mass meeting, for the purpose of securing changes in the tariff laws affecting the tailoring industry.<sup>9</sup> However, by 1893 the exchange was recognized as an opponent by the union, and in his 1893 report<sup>10</sup> Secretary Lennon, after remarking that during the preceding year there had been many conflicts between the union and the exchange, which had been expensive to both, recommended that the executive officers of the union should confer with the officers of the exchange and endeavor to formulate some plan of arbitration for

<sup>2</sup> John B. Lennon was president of the Journeymen Tailors' Union of America for the year 1884-1885, and general secretary for twenty-three years, from 1887-1910. The office of president was abolished in 1889, leaving the secretary as chief executive. For biographical sketch of Mr. Lennon, cf. Stowell, *op. cit.*, p. 93.

<sup>5</sup> *The Tailor*, November, 1889, article on "The Evils of the Trade and how to Remedy Them."

<sup>6</sup> *The Tailor*, August, 1909, p. 44, Proposition No. 40; vote, November, 1909, supplement.

<sup>7</sup> Organized 1887.

<sup>8</sup> *The Tailor*, August, 1891, p. 2, and August, 1893, p. 3, reports of general secretary on conference committees.

<sup>9</sup> *The Tailor*, March, 1892, p. 4; April, 1892, p. 4; June, 1892, p. 4.

<sup>10</sup> *The Tailor*, August, 1893.

the settlement of any difference that might arise. The result of this recommendation will appear in a later paragraph.

In 1896 the exchange endeavored to establish a mutual benefit fund for employees of its members, but this plan was viewed with suspicion by the union men, and seems to have met with little success.<sup>11</sup> In 1901, and again in 1903, Mr. Lennon repeated his recommendation that the exchange be approached on the subject of arbitration.<sup>12</sup> The 1903 committee on laws and audit<sup>13</sup> approved specifically this recommendation, and the general secretary was instructed by the Executive Board to open correspondence with the Merchant Tailors' National Exchange.<sup>14</sup>

To understand the results of this correspondence it is necessary to note that in February, 1903, a new association of merchants was formed, known as the Merchant Tailors' National Protective Association, which was a characteristic "open-shop" association, organized for the purpose of releasing the merchant tailors from what they regarded as the domination of the unions.<sup>15</sup> Not all of the local branches of the old Merchant Tailors'

<sup>11</sup> *The Tailor*, February, 1896, p. 6, and editorial, p. 8.

<sup>12</sup> *The Tailor*, August, 1901, p. 4, and August, 1903, p. 5, reports of general secretary on "Arbitration."

<sup>13</sup> Proceedings, *The Tailor*, August, 1903, p. 15. Prior to 1894, constitutional questions were submitted to committees of the convention. In 1894 an amendment was passed providing for a special committee to meet before each convention, to be known as the committee on laws and audit. This committee was required to audit the books of the general officers, to examine proposed amendments to the constitution, and to make a report to the convention. In 1896 this committee was given power to take the place of a convention in years when the convention did not meet, and to send out such propositions as it approved for a general vote. In 1897, 1899, 1901, 1903, and 1907 the committee acted in this capacity, no conventions being held in these years. In 1909 the meetings of the committee between conventions were abolished, but its services before conventions are still retained.

<sup>14</sup> Proceedings General Executive Board, *The Tailor*, September, 1903, p. 17.

<sup>15</sup> The following is quoted in *The Tailor*, May, 1903, p. 9, as a correct description of the principles of the Merchant Tailors' National Protective Association, reprinted from its literature:

"In the association's declaration of principles any intention to interfere with the 'proper functions' of labor organizations is disclaimed. It is also set forth that strikes and lockouts are absolutely disapproved of, and that no question will be arbitrated with men on strike; no lockout will be countenanced on any arbitrable question unless arbitration has failed; workmen

National Exchange joined the Protective Association, but for the time being the latter association took up the functions of an employers' association in the trade. The communication, therefore, of the Tailors' secretary, addressed to the exchange, and suggesting the adoption of a system of arbitration, was referred to the Protective Association. The reply of the Protective Association, together with some references to the previous experience of the union with the exchange, is indicated by the following extract from Secretary Lennon's report to the 1905 convention:<sup>16</sup>

Their officers [i. e., the officers of the Protective Association] answered to the effect that nothing could be done with the matter until their coming convention which was held in February 1903. Immediately after that I received a communication stating in essence that they could not take the matter up for the reason that there were some things declared for in our

will not be discriminated against because of membership in any society or organization; number of apprentices is to be determined solely by the employer; employees will not be permitted to place any restriction on methods of production of the employer, who will also elect whether employees shall be paid by the piece or by the hour; employees may leave when they see fit and may be discharged when the employer sees fit—these being matters not subject to arbitration. The association advises its members to meet their employees individually or collectively and endeavor to adjust difficulties on an equitable basis. This failing, a board of arbitration is advised, the employees keeping at work pending its decision. Members not complying with these recommendations are denied the support of the association, unless the organization approves the course taken. The declaration of principles concludes as follows:

“This association will not countenance any conditions of wages which are not just, or which will not allow a workman of average efficiency to earn at least a fair wage.”

“According to a booklet issued by the association, the organization will stand for American rights and American freedom; it will provide for the interchange of information concerning the character and competency of employees and the distribution of journeymen as circumstances require. A system of registration of employees and the use of recommendation and identification cards is also to be instituted. Every effort is to be made to settle disputes amicably, but if the organization is forced into a conflict, a solid front is to be presented. The association will, in case of trouble, assist in procuring workmen and in having the members' work done. It will, through its agents in every city, be promptly advised of any proposed action detrimental to the interests of its members and be prepared for any emergency which may arise.”

<sup>16</sup> *The Tailor*, February, 1905, p. 8. For Lennon's view of the Protective Association, see also *The Tailor*, June, 1903, p. 16, editorial; and August, 1909, p. 11, secretary's report to the 1909 convention.



constitution that they considered antagonistic to the best interest of the merchant tailors of the country. What the matters were to which they referred they did not, however, state. An additional letter was written by myself suggesting that even these things of which they complained might in some way be adjusted or eliminated, if we could only meet and talk the matter over, but nothing came of it, as apparently the Protective Association had no desire to do business with us along the lines of either conciliation or arbitration.

The St. Paul Convention which was held over eleven years ago appointed Bro. Frederick Jensen and myself a committee to confer with the Merchant Tailors' National Exchange upon the same subject of conciliation and arbitration. We attended their convention held at Washington, D. C., submitted the matter to them, and were told by their committee that they had decided to do nothing in the matter for the reason that there were too large a number of their members who did not employ members of the J. T. U. of A. Our Union has stood from its very beginning for conciliation and arbitration of any disputes that might arise in so far as they refer to questions of wages, conditions of labor or any of those questions which are in most every case the cause of strikes and lockouts. We have been invariably turned down by the organization of the Merchant Tailors. I make this statement so that you will have the record, and that the world at large can have the record showing that it is not the trade union that refuses conciliation and arbitration. At least not in our trade, but that it is the employers' associations, and I am sure the J. T. U. of A. will be found ready in the future as in the past at any time the Merchant Tailors' organization are willing to meet with us and attempt faithfully and honestly to arrive at some kind of an agreement and understanding that will make for continued peace, and consequent continued prosperity in the merchant tailoring industry.

In February, 1906, representatives of several of the local branches of merchant tailors which had not joined the Protective Association met in New York City and re-formed the National Exchange. The Protective Association and the National Exchange continued their existence side by side until February, 1910, when they held a joint convention and united under the title, "National Association of Merchant Tailors of America."<sup>17</sup>

The report of Secretary Lennon to the 1909 convention of the Tailors indicated that up to that date no further satisfaction had been obtained in the matter of negotiating a plan of arbitration with the merchant tailors' associations. In 1911 and 1912 Secretary Brais attended the convention of the National Association of Merchant Tailors, and was given the floor to address the convention. He reported that he found a friendly spirit manifested

<sup>17</sup> Samuel H. Spring, correspondence, October 29, 1916.

toward the Journeymen Tailors' Union, and that the new merchants' association had appointed a labor committee, which was willing to meet with a committee of the union. However, Mr. Brais reported further, the merchants' association in 1912 had local branches in only fourteen cities, although they had individual members in seventy-five cities, and it was the opinion of the president of the association that his organization would have to become more extensive before a national agreement with the union would be possible.<sup>18</sup>

In February, 1916, the National Association of Merchant Tailors included thirteen local associations<sup>19</sup> and two hundred individual members representing one hundred and twenty-five cities in which there were no local associations.<sup>20</sup> The literature of the association indicates that it is organized to promote the interests of its members, both in a mercantile way and in connection with labor troubles, but there is no evidence of any hostility to the Journeymen Tailors' Union as such, and the secretary of the Merchants' Association states that its members have had "very little real serious trouble, nothing general,"<sup>21</sup> with their employees.

## 2. GENERAL DESCRIPTION OF COLLECTIVE AGREEMENTS

The collective agreement in the tailoring industry is primarily a list of piece rates, and is universally known as a "bill of prices." However, the agreement may, and generally does, contain provisions covering matters other than wages. These additional provisions will be discussed in their proper places. At this point it is desired to call attention only to a clause in the model agreement approved by the Tailors' Union.<sup>22</sup> This clause

<sup>18</sup> *The Tailor*, March, 1911, p. 22; E. J. Brais, correspondence, March 2, 1912.

<sup>19</sup> Boston, Buffalo, Chicago, Cincinnati, Cleveland, Denver, Erie, New York City, Philadelphia, Providence, St. Louis, Toledo, Washington.

<sup>20</sup> *Official Record of the Seventh Annual Convention of the National Association of Merchant Tailors of America*, St. Louis, Missouri, February 8-10, 1916.

<sup>21</sup> Samuel H. Spring, correspondence, October 29, 1916.

<sup>22</sup> In 1905 a model agreement was drawn up by a committee of the Tailors' Union and approved by a referendum vote. This model agreement contains all of the usual items, but the prices are left blank to be filled in by agreement between the union and the employers in each city. *The Tailor*, August, 1905, pp. 1-4.

provides that the agreement shall be self-renewing, unless one of the parties desires a change.<sup>23</sup> This provision is of more importance than appears at first sight. It was found by the Tailors that the mere presentation of a bill for renewal was frequently irritating to the employers, and if the latter happened to be in an "open-shop" frame of mind, the request for renewal might be made the occasion for a break with the union. There is little doubt that the self-renewing feature of the agreement has considerably reduced the friction between employers and employees.

### 3. ECONOMIC DEMANDS AND POLICIES OF THE UNION

#### (a) *Recognition of the Union*

The demand for recognition of the union is essentially equivalent to a demand that the employer shall recognize and employ the system of collective bargaining for determining the terms and conditions of employment. "Recognition of the union" implies that the employer will meet the representatives of the union, whether his own employees or not, and deal with them as the authorized representatives of his employees. As in most industries, the union has been obliged on a number of occasions to fight for this kind of recognition. Particularly during the period of ascendancy of the Merchant Tailors' National Protective Association, there were frequent attempts on the part of employers to oblige their employees to bargain as individuals. Sometimes the expiration of a former agreement and the presentation of a new scale of prices by the employees was made the occasion for the break by the employers. The unions have invariably refused to abandon the principle of collective bargaining, and in most cases the employers have given up their demands and made a settlement with the union committees, although sometimes long

<sup>23</sup> "It is hereby agreed by and between the parties hereto that the above bill of prices and conditions shall be in full force and effect from and after . . . for one year, and shall continue indefinitely provided, however, that at least thirty days prior to each year's termination and every year thereafter, if either party wishes to change any provision of this bill of prices and agreement, they shall notify the other party, in writing, to that effect, specifying the change or changes desired, whereupon a meeting shall be arranged between the parties hereto, to make a new agreement, if possible." Model Agreement, Journeymen Tailors' Union of America, *The Tailor*, loc. cit.

and expensive strikes were necessary before this result was secured.<sup>24</sup>

During the years when the "open-shop" agitation by employers in all industries was most vigorous, it frequently happened in the tailoring trade that an employer who had been accustomed to doing business with the union announced that henceforward he was going to run an "open shop." Such an announcement generally created considerable excitement in the local union, and letters were dispatched to headquarters asking permission to call a strike to compel "recognition of the union" by the employer. In such cases Secretary Lennon was accustomed to advise the locals that it made no difference what the employer called his shop, as long as the people working there were members of the union, and that the most substantial recognition that a union could receive was the payment of the scale of prices previously agreed upon. The locals were therefore advised to take no action until the employer undertook to introduce non-union people or until he refused to pay the scale. By this policy there is no doubt that many useless strikes were avoided, as in many cases the employers were glad to let well enough alone.<sup>25</sup>

<sup>24</sup> For accounts of strikes of this kind cf. Stowell, *op. cit.*, pp. 124-125, New York strike of 1894; p. 126, strikes in Kansas City, Denver, Binghamton, N.Y., Milwaukee, and Cleveland, 1903-1904; p. 127, lockout in Los Angeles, Cal. The following communication of the employers to the tailors in Kansas City in 1903 is an interesting sample of an employers' "ultimatum:"

"Believing it to be our mutual interest, the undersigned merchant tailors have resolved that in the future we will treat with our men as individuals only, and employ same as long as they meet our requirements. It is not our motive to reduce wages; on the contrary, we will pay more for the highest class of workmanship, thereby making it an incentive to excel; we decline to pay as much for poor work as the first-class men are justly entitled to. We also reserve the right to judge the class to which it belongs, and to place the jours in their respective grades. We decline to furnish back shops, as past experience has proven them to be a detriment to the craft, instead of a help. We will not put any restrictions on our men as to helpers, as we deem it very essential to the trade that we have apprentices." *The Tailor*, August, 1903, p. 24.

<sup>25</sup> Cf. *The Tailor*, October, 1902, p. 12, and April, 1907, p. 15, editorials by Secretary Lennon.



(b) *The Union Shop*

For purposes of this discussion a terminology is employed which is coming into use among students of the labor question, and which endeavors to avoid the confusion and ambiguity which has frequently attended the use of the terms, "open shop" and "closed shop." Under this terminology two kinds of shops are recognized, the "union shop" and the "non-union shop." The union shop is said to exist in an establishment where wages and conditions of employment for all employees are determined by agreement between the union and the employer. The non-union shop is said to exist in an establishment in which wages and conditions are determined by the employer without consulting the union. The above definitions being given, union shops are subdivided into "closed union shops" and "open union shops," and non-union shops are subdivided into "closed non-union shops" and "open non-union shops." The "closed union shop" is held to exist in establishments where, as a matter of agreement between the employer and the union, none but union members can obtain or retain employment. This represents the ideal from the trade union standpoint. The "closed non-union shop" is held to exist in establishments where, by reason of the attitude or policy of the employer, no union member can obtain or retain employment. This represents the ideal from the standpoint of employers who are opposed to unionism. Between the two extremes are the "open union shop" and the "open non-union shop." In the "open union shop" wages and conditions of labor are regulated by agreement with the union, but non-unionists are at liberty to secure employment, and to retain it, so far as anything in the agreement is concerned. In the "open non-union shop" wages and conditions are regulated by the employer without consulting the union, but the union members are at liberty to secure and retain employment, so far as anything in the policy of the employer is concerned.

It is obvious from the above discussion that the force which prevents the non-unionists from working in a closed union shop is the strength of the union, manifested by its ability to secure a closed shop clause in the agreement, and to enforce the same; while the force that prevents the unionist from working in a

closed non-union shop is the power of hiring and discharge on the part of the employer.

Shops of all four kinds are found in the custom tailoring trade, but a majority are union shops, open or closed, and open non-union shops. Only a few shops have come to the writer's attention where unionists are excluded altogether by action of the employer, although there are some shops where they are excluded by action of the union.<sup>26</sup> The tailors, like other unions, have been obliged to face an "open shop" movement on the part of the employers. As already explained,<sup>27</sup> where this movement consisted simply of talk, the executive officers of the union have advised that it be overlooked altogether. Where, however, the employers have carried the matter to the point of a lockout or a refusal altogether to deal with the union, the Tailors, as already noted,<sup>28</sup> have resisted vigorously and have become involved in some serious conflicts.

The danger of trouble with the employers over the union shop question has been met in part by a diplomatic attitude on the part of the unions. They have recognized that a demand upon an employer to sign a closed shop agreement is generally irritating, and they have not always insisted upon a closed shop clause in their agreements.<sup>29</sup> The Tailors have relied upon the strength of the organization rather than upon the written agreement to get everybody in the shop into the union. The principle has been repeatedly laid down by their officers, that a weak union cannot enforce a closed shop, even with a written agreement, but a strong union can enforce a closed shop without a written agreement. It is true that many of the Tailors' agreements specify that only union men shall be employed, and wherever the employer desires the use of the label, this condition is always understood, either expressly or tacitly. But where the employer for any reason objects to a closed shop clause in the agreement,

<sup>26</sup> In both cases the exclusion of unionists is usually the result of a strike or lockout which has been lost by the union, and which has left considerable bitterness of feeling on both sides.

<sup>27</sup> *Supra*, p. 21.

<sup>28</sup> *Supra*, p. 20.

<sup>29</sup> The model agreement approved by the Tailors' Union says nothing whatever about the employment of union men only.

the national officers of the Tailors' Union have ordinarily advised the local union to accept the agreement without this clause, provided all other terms were satisfactory. And where a strike has been in progress, in which the closed shop agreement was one of the demands, if a settlement of all other demands could be secured, the local union has been advised to waive the closed shop demand.

The aim has been in all cases to get the non-unionists into the union with the least possible friction with the employer, and the strike against the non-unionist has been employed only as a last resort. When, however, it became evident that one or more non-unionists who had obtained work in a shop hitherto solidly union were not going to join voluntarily, there has been no hesitation on the part of the national officers in supporting the local union in striking, if necessary, for the purpose of getting the non-unionists either into the union, or out of the shop. It was formerly the custom in such cases to demand from the employer the discharge of the offending employees, unless they joined the union, but after such action had been construed by some of the courts as conspiracy, the union found it necessary to confine itself to notifying the employer that the unionists did not care to work with the men in question. This, of course, left him his choice between the union men and the non-union men, and if orders were coming in rapidly the employer ordinarily induced the non-unionists to join, and in some cases even went so far as to pay their initiation fees. The knowledge of the fact that the union was prepared to strike if necessary has often been sufficient to bring the non-unionists in without further trouble.

In this connection it should be observed that the regulations of the Tailors' Union on the subject of the union shop affect mainly journeymen tailors capable of working for the best stores, employing the old system of production, because it is in this class of stores in the main that the union has maintained its influence.

An investigation made in 1911 showed that in 65 cities reporting,<sup>30</sup> there were 1,239 merchant tailoring establishments of the

<sup>30</sup> Replies to the questionnaire were received from 73 cities, but only 65 covered both the item of union shops and the item of union membership. The eight cities not reporting on both of these items were New York, Chi-

kind organized by the Tailors' Union, and of these 378, or 30.5 per cent, were union shops. In the same cities it was reported that there were 6,074 tailors eligible to membership, and of these 2,640, or 43.5 per cent, were union members. The fact that the percentage of union members is larger than the percentage of union shops is probably to be explained on the ground that the union has organized more large shops than small ones. A number of small shops, where the proprietor employs no journeymen, and is not himself a union member, are not organized at all. It is evident from these figures that in the cities reporting the union controlled less than half of the tailors, and somewhat less than one-third of the shops; but from various sources the writer is informed that, if the finest stores and the most skilled journeymen are considered, the percentage, both of journeymen tailors and of shops, controlled by the union is considerably higher.<sup>31</sup> The percentage in both respects is also higher in small cities than in large ones. In thirty cities of less than 25,000 population, it was reported in 1911 that there were 627 tailors eligible to membership, of whom 530, or 84 per cent, were in the unions; and in the same cities it was reported that there were 150 mer-

cago, San Francisco, Seattle, St. Paul, Troy, Peoria, and Manitowoc. For the returns in detail, *cf.* Stowell, *op. cit.*, pp. 140-143, 147. For explanation of method and probable accuracy of the investigation, *cf. ibid.*, pp. 132-134, 145.

<sup>31</sup> A pamphlet published by the American Federation of Labor in 1911, entitled, "Manufacturers Using Labels of Unions affiliated with the Union Label Trades Department of the American Federation of Labor," gives a list of 693 establishments in the United States and Canada entitled to use the Journeymen Tailors' label, and actually using it. In the 72 cities covered by the writers' investigations, his figures indicate 546 union shops, while in the same cities, the A. F. of L. pamphlet indicates 276 label establishments. The terms "union shop" and "label establishment" are nearly coextensive, but not quite; all label establishments must be union shops, but not all union shops actually use the label, as customers and employers sometimes object to its use. The A. F. of L. pamphlet does not indicate the methods employed for assembling the information therein contained, but it seems probable that it is based upon incomplete returns from the cities considered.

To those familiar with the relative quality of the stores in any locality, the A. F. of L. pamphlet will be found useful for examining the conclusion, that the best stores are more thoroughly organized by the Tailors' Union than those of a lower grade.



chant tailoring establishments, of which 118, or 79 per cent, were union shops. In twelve cities of more than 100,000 population,<sup>32</sup> it was reported that there were 4,459 tailors eligible to membership, of whom 1,372, or 31 per cent, were in the unions; and in the same cities it was reported that there were 901 merchant tailoring establishments, of which 138, or 15 per cent, were union shops. To explain fully the differences in these respects between large and small cities would require a more complete knowledge of the conditions in each city than that which is at present available. In general, however, the difficulty of effective organization in the large cities is explained: (a) by the greater territory to be covered; (b) by the large number of immigrant tailors, who either are not familiar with conservative trade union methods or are not in sympathy with them; (c) by the fact that many of the skilled tailors in the large cities are virtually contractors, employing a number of helpers; these tailors were kept out of the union by the one helper rule, when this rule was in force, and furthermore, being more than half employers, they lack the unity of interest necessary to the formation of a successful union. Some of the local conditions that account for the low per cent of organization in certain specific cities are: (a) the drift of the trade to fashion centers, such as New York and Boston; (b) the effect of unfortunate strikes; (c) the neglect of the union in some cities to pay attention to any but the best stores.

Concluding the discussion of the shop question, it should be noted that among journeymen tailors the regulations of the union are familiar; these tailors do not as a rule expect to get work in a union shop unless they keep up their union membership, and if they have fallen out of benefit, or have never been members, they generally square themselves with the union without trouble. The duty of keeping watch over the interests of the union in this respect devolves upon a member in each shop known as the shop steward, who collects the dues and sees that new tailors are brought into the union. The terms of the union are not onerous; the initiation fee is low,<sup>33</sup> there is practically no

<sup>32</sup> Boston, Cleveland, Baltimore, Pittsburgh, Buffalo, Milwaukee, Kansas City, Indianapolis, Portland, Atlanta, Winnipeg, Lowell.

<sup>33</sup> \$2.00, unless the candidate was formerly a member, in which case he must pay \$6.00.

discrimination (with the exception of some unions that bar negro tailors) except for offenses against the union, and the newcomer is allowed to go to work in the shop and if necessary to wait until he gets his first wages before he is obliged to pay his initiation fee and his first month's dues. The Tailors' Union has had, therefore, comparatively little difficulty in maintaining the union shop principle, where once established, except in those cases where the employers have broken with the union and deliberately endeavored to fill their shops with non-union men.

### (c) Wages

*The wage agreement or price bill.* The employees of tailor shops include both piece and time workers. An investigation made in 1911 showed that of 5,084 union members in 69 cities (representing 41 per cent of the total membership and 22 per cent of all local unions) 3,970 were employed on the piece system, and 1,114 on the weekly system.<sup>34</sup> Of the employees working on the weekly system, a majority are bushmen. The balance are employed chiefly in shops which have adopted the weekly system for all employees; although some are in shops where the piece system is retained for the skilled journeymen, but one or more pressers or finishers are employed by the week. In a majority of shops, therefore, the wage agreements contain (1) piece scales, (2) time scales.

(1) Piece scales. The Tailors belong in that group of unions which "work under scales which attempt to cover, by descriptive enumeration, every type or pattern for which a distinct rate is to be paid."<sup>35</sup> It is not proposed to discuss all of the technicalities of tailors' bills of prices.<sup>36</sup> There are three matters, however, that require particular attention: (a) classification of materials, (b) classification of firms, (c) payment of helpers.

(a) Classification of materials. There are two reasons for

<sup>34</sup> Cf. Stowell, *op. cit.*, pp. 151-155, 157.

<sup>35</sup> D. A. McCabe, *The Standard Rate in American Trade Unions*, p. 35. McCabe includes in this group, besides the Tailors, the Glass Bottle Blowers, the Flint Glass Workers, the Operative Potters, the shirt and overall workers in the United Garment Workers, and the stove molders in the Molders' Union.

<sup>36</sup> The reader who is interested can obtain a good idea of a tailors' bill of prices from the model agreement and the report of the committee who recommended the same. Cf. *The Tailor*, August, 1905, pp. 1-4.

the classification of materials for purposes of determining piece rates; first, the fact that some materials enter into the more expensive suits, while others enter into the cheaper suits; and second, the fact that some materials are harder for the tailor to work on than others. The model agreement of the Tailors' Union contains two classes of materials, as follows:

First class goods: Basket, beaver, birdseye, chinchilla, cravenett, covert cloth, crepe, corkserew, diagonals, drap-te-ete, doeskin, elysians, fancy vestings, frieze, kersey, melton, montagnac pique, pilot, petershams, ribs, silk, stockinets, tricot, unfinished worsteds, velvet, venetians, vicuna, worsted, whip cord.

Second class goods: Alpaca, cassimere, cheviot, corduroy, duck, flannel, jeans, linen, marseilles, mohair, seersucker, serge, tweed, thibit, velveteen, wool crash, wash vestings.

The goods listed in the first class are those which are ordinarily used for the higher priced garments; they are also of a relatively compact and hard texture, making them harder to sew and press. The goods in the second class are of a softer and looser texture, and enter into the moderate priced garments.<sup>37</sup> The model agreement is not compulsory, and some local unions have only one class of materials in their bills, but where they have the two classes, the piece rate is higher for the first class than for the second. The model agreement does not contemplate the setting of two prices for every kind of garment. There are some garments which are intended to be listed as first class, regardless of material; for example, dress coats, vests and trousers, Tuxedos, frock coats, new market overcoats and surtouts.

(b) Classification of firms. In cities of moderate size the same bill of prices is usually paid in all of the establishments controlled by the union. But in large cities, where there are classes of stores, some handling high priced garments only, while

<sup>37</sup> The classification of goods is not a new thing in the tailoring trade. Cf. the following extract from the speech for the defense in a trial of tailors for conspiracy in Philadelphia in 1827:

"Distinctions of various kinds had been attempted between thick and thin clothing. . . . To put an end to such altercations a specification of prices was determined on, and such a printed document prepared as would effectually preclude any further ambiguity." *The Trial of Twenty-four Journeymen Tailors, charged with a conspiracy*. Philadelphia, 1827. Reprinted in *Documentary History of American Industrial Society*, IV, 142-143.

others handle the moderate priced and lower priced garments, the union has not found it possible to secure the same piece rates in all the stores, and has accepted a lower bill in some stores than in others. For example, in New York City the various bills paid can be grouped into about four classes, the differences in piece rates being roughly proportionate to the differences in the prices of the garments sold by each class of stores. It has been claimed on behalf of the tailors that they recognized more thoroughly than any other craft the principle that the employer should not be asked to pay the same wage to workmen of different grades of ability, and employed on different grades of work.<sup>38</sup> Nevertheless it has been difficult to adjust the bills in different stores in a way satisfactory to the merchant tailors, the complaint being that journeymen worked on a given grade of clothing for one firm at one rate and on the same grade of clothing for another firm at a lower rate. The most satisfactory results have been secured in those cities where it was possible to make the bill uniform in all the union stores.

(c) Payment of helpers. Where a journeyman tailor works with help, the helper is paid by the journeyman, and not by the employer. The usual rule is that the helper gets one-third of the price of the job, and the tailor two-thirds. On this system it is obvious that the helper will share in any increase in piece wages secured by the journeyman. However, in order to give

<sup>38</sup> "Our unions are severely criticized for maintaining a minimum bill of prices, the merchant tailors harping, a few of them at any rate, on the old worn-out statement that all men are not equally capable and are therefore not entitled to the same compensation. We have never denied this claim, and do not deny it. We fix a minimum scale to cover the average journeyman, and if there are men of special expertness the merchant tailor has always been at liberty to pay as much more than the scale as he pleases, and not only is this true, but as is the case in no other industry we present different price bills to different establishments. The store requiring the finest work and the finest workmen is asked to pay the highest bill, and those requiring less skill, we do not require them to pay the same scale. This gives the merchant tailor an opportunity to employ that class of mechanics that are needed to turn out his trade. I know of no other craft in which this principle is so thoroughly recognized as in that of the tailors." *The Tailor*, October, 1903, p. 16, editorial on "The Trade Union and Business Stability."



official endorsement to this principle, a constitutional amendment was submitted and passed in 1907, as follows:<sup>39</sup>

In all cases where helpers are employed the helpers shall participate in all increase of wages, reduction of the hours of labor, etc., in the same proportion as the journeyman tailor that employs them.

(2) Weekly scales. We consider (a) weekly scales in shops where both piece workers and weekly workers are employed; (b) weekly scales in shops employing the weekly system exclusively. The model agreement, which is drafted for case (a), contains the following provisions which are of importance in this connection:

All extras not mentioned in this bill shall be paid for at the rate of not less than ..... cents per hour.

Bushelling by the hour shall not be less than ..... cents.

Bushelmen's wages shall not be less than ..... dollars a week; working day shall not be more than ten hours.

But the model agreement provides for exclusive weekly agreements if the local unions desire:

The adoption of this piece price bill shall not be construed as prohibiting any Local Union from making an agreement to make all work by the week in accord with our constitution.

There are a few localities where a large part of the work is made on the weekly system. For example, in 1911 it was found that about one-half of the members of the Seattle union, and about forty per cent of the members of the San Francisco union, were working by the week. The present union scale for weekly workers in Seattle is as follows:<sup>40</sup>

<i>Coats</i>		
		Per Week
Tailors .....		\$25.00
Operators .....		25.00
Operator's assistant.....		18.00
Pressers .....		25.00
Presser's assistant.....		18.00
Buttonhole maker.....		18.00
First-class finisher.....		16.00
Second-class finisher.....		14.00
Try-on maker .....		18.00

<sup>39</sup> *The Tailor*, September, 1907, p. 16, Proposition No. 1.

<sup>40</sup> *The Tailor*, April 10, 1917, p. 3. Other details of the union agreement for weekly workers in Seattle, and a description of the diverse methods of producing clothing in that city, may be found in the same issue.

*Vests*

Operator .....	22.00
Operator's assistant.....	16.00
Presser .....	22.00
Presser's assistant.....	18.00
Buttonhole maker .....	16.00
Finisher .....	12.00

*Trousers*

Operator .....	22.00
Operator's assistant.....	16.00
Presser .....	22.00
Presser's assistant.....	18.00
First-class finisher.....	14.00
Second-class finisher.....	12.00

*Bushelmen*

Bushelman .....	25.00
Bushelman's assistant.....	22.00

A curious combination of the time and piece systems of payment is found in the "time logs" which are in use in some localities in Canada. In a time log each piece is standardized at so many hours, the hourly rate being constant.

*Wage policy of union.* (a) Reductions. It has been the uniform policy of the Tailors' Union to resist reductions whenever offered. There has been no deviation from this policy except in times of extreme industrial depression. In resisting reductions the union has met with a high degree of success, and it has been found necessary to accept few reductions, except during panic times.

(b) Increases. Considerable discretion has been exercised by the Tailors' Executive Board in the matter of supporting demands for increased wages. It has been their rule for a number of years to require from local unions desiring to raise their price bills a copy of the bill already paid, as well as a copy of the bill which it is desired to present to the employers, so that the board can see directly the amount of the increase demanded. The board has never placed obstacles in the way of any local union's obtaining as large an increase as possible by peaceable negotiations, but when it has been evident that a strike would be necessary, the board has usually required that the local union should not demand more than a ten per cent increase; and the locals have been strongly urged to accept a compromise of less

than this amount, rather than to strike. Care has also been taken to present bills at the beginning of the good seasons, when the employers are rushed with orders and can least afford a strike. These policies have been followed quite consistently, with the result that a very large part of the demands made by the local unions have been settled on a satisfactory basis without strikes. Where strikes have been necessary, a large per cent have succeeded, and, as a rule, the gains made have been permanent.

*Results of wage policy.* With reference to the actual accomplishments of the Tailors' Union in the matter of wages, there are several questions which naturally arise:

(1) What are the average yearly earnings of tailors at the present time: (a) of coatmakers, (b) of vestmakers, (c) of trousersmakers, (d) of bushelmen or other journeymen employed by the week, (e) of helpers?

(2) What has been the per cent of increase or decrease in tailor's piece rates over any given period of years?

(3) Have the annual earnings of tailors changed in the same proportion as their piece wages?

(4) To what extent have increases been due to the activities of tailors' unions, and to what extent to other causes?

(5) Have increases in wages kept pace with the increase in the prices of commodities ordinarily consumed by workmen of the same general standard of living as the tailors?

(6) Have the wages of tailors kept pace with those of other workmen of the same general preparation and skill?

It is obvious that all of the above questions may be applied to specified localities or districts, or to the country as a whole. The extraordinary diversity of the conditions<sup>41</sup> under which the

<sup>41</sup> In addition to the differences in skill and speed of work, which affect the wages of piece workers in all trades, it must be noted that some tailors are working in free shops, some in rented shops and some at home; some on expensive clothing and some on cheap clothing, and of these, some receiving the same piece wages, regardless of the price of the garment, while others receive a classified scale, the basis of classification, moreover, not being uniform; the specifications for each garment are subject to a great many minor variations, or "extras," for which payment differs in different localities; the establishments are in all stages of "industrial evolution;" some tailors are working in union towns, and some in non-union; the predominating nationalities, and corresponding standards of living, vary greatly as between different localities; some tailors work with help, and some without,

tailors of North America are working renders impossible any answer to the above questions which can be supported by statistical data at hand. All that can be done is to present the writer's impressions, secured from various sources,<sup>42</sup> and advanced with the utmost reservation as to their probable accuracy.

Upon the first topic, yearly earnings of tailors, the different crafts stand usually in the following order as to the amount of their yearly earnings: bushelmen, coatmakers, trousersmakers, vestmakers, helpers. Only a few tailors of any craft earn more than \$1000 a year, while it is not probable that many helpers, unless they purposely lose time, earn less than \$200 a year. The average wages of bushelmen the country over are probably about \$800 a year. The average annual wages of coatmakers, vestmakers and trousersmakers, considered as a group, lie probably between \$600 and \$800. Coatmakers may average \$750, trousersmakers \$700, and vestmakers \$600. Helpers average probably \$350.

On the second question, increase or decrease of piece rates, it may be said with certainty that only a few local unions have been obliged to accept permanent reductions since they entered the national union, and that practically all local unions have increased their piece rates. The increases have usually taken place at intervals of from two to five years for any given union, and have averaged probably five per cent each time. It is believed that this statement will apply to a majority of the local unions. A more general or exact statement is impossible. In 1883, when the present national union was organized, it is probable that many local unions existing prior to that date had not yet recovered from the demoralizing effects of the panic of 1873.

and where they work with help, the number of helpers varies, and the situation is further complicated by the fact that in many cases the helpers are members of the tailors' own families; employment is seasonal and exceedingly irregular, and the hours of labor completely without standardization, except in a few establishments employing the weekly system, and in a few cities where the local unions have undertaken to limit the hours of piece workers.

<sup>42</sup> The writer's impressions are based upon data in reports of state bureaus of labor; upon returns received from a questionnaire sent out in 1911 to secretaries of local unions; upon the observation of union officers, and upon his own observation while employed in the general headquarters of the Journeymen Tailors' Union.



At any rate, it is known that a great many local unions, on joining the national, secured very shortly an increase in their price bills, and increased them further from time to time as indicated. An effort was made in 1911 to secure exact data on this point, but the returns were not sufficiently definite or comprehensive to be of value.

To answer the third question, it would be necessary to know whether there has been a change in the average number of pieces that a skilled tailor, working by the piece on the old system, gets each year. This question in turn requires a knowledge of the amount of work available and of the number of skilled tailors. As for the amount of work available for "old-line" tailors, there is no doubt in the writer's mind that it has decreased during the life of the present national union, on account of the competition of cheaper methods of producing clothing. As for the number of skilled tailors, it is less easy to trace changes in this respect. As we shall see in another connection,<sup>43</sup> it is generally admitted that the number of tailors capable of doing the highest grade of work on the individual system has declined, and it is possible that it has declined sufficiently to give each tailor of this grade now employed as many pieces as he would have obtained, say, thirty years ago. However, if all journeymen tailors are considered, it is the writer's opinion that their number has not declined in the same proportion as the work to be done (i. e., the work to be done on the old individual system), and that upon the whole the average number of pieces to each journeyman is less than it was thirty years ago. If this is true, the average annual earnings of journeymen tailors have not increased in the same proportion as their piece rates.<sup>44</sup>

<sup>43</sup> *Infra*, pp. 78-81.

<sup>44</sup> If only native tailors were to be considered, the number would probably be adjusted so that each would get about the same number of pieces from year to year. The effect of a reduction in the amount of work to be done in a union shop is first to give a less number of pieces each season to each of the permanent employees, inasmuch as they work under a turn-list; but after a time some retire and are not replaced, and the average number of pieces which the others get tends to be the same as before. The training of apprentices being under the control of the journeymen, the number of apprentices will probably be adjusted to the same end. But there is a "floating element" of tailors, consisting largely of immigrants who have learned their trade abroad, who obtain employment during the rush seasons,

The fourth question would be difficult to answer, even with comprehensive wage data, and no attempt is made to answer it here. The fifth question obviously involves the first three: the opinion is expressed, that even without considering the recent period of abnormally high prices, the increase in tailors' wages has fallen a little short of the increase in the prices of commodities ordinarily consumed by tailors and their families. Finally, it is believed that the wages of tailors are about equal to those of the least prosperous of the skilled building trades, and somewhat short of the wages of the printing trades and of the better paid building trades.

#### (d) *Hours of Labor*

One of the most difficult of all reforms attempted by the Tailors' Union has been the regulation of the hours of labor. The fundamental obstacle to regulating hours has been the seasonal character of the trade. At certain seasons of the year, notably the spring and fall, orders for custom clothing are numerous, and in most cases the customer is in a hurry to get his individual order completed. At other seasons trade is so slack that the tailor may get only one or two garments to make during an entire month. These extremes of employment have existed in the tailoring trade from the earliest times,<sup>45</sup> and have

and tend to cut down the average yearly number of pieces received by each journeyman; and this element, originating at a distance from the demand, is not adjusted like the local supply of labor.

<sup>45</sup> *The London Tradesman*, writing of the journeymen tailors of London in the year 1747, says: "They are as numerous as locusts, are out of business about three or four months in the year, and are generally as poor as rats." Galton, *The Tailoring Trade*, p. 3, footnote. And in *The Pioneer*, May 10, 1834, in the course of "The address of the journeymen tailors of the metropolis," appears the following:

"The men working at home are scarcely ever able to earn more than 3 shillings 6 pence or 4 shillings per day, with the assistance often of their wives and children, and then, as I have before stated, only when they can get work to do. Even these men, working in this manner at this great reduction, are very frequently days, nay, months, without employment, and consequently without pay. If, however, an order comes in to be executed immediately, the journeyman must labor night and day to accommodate the customer and master, and make every sacrifice of health, and the only remaining domestic comfort on such occasions, or risk the chance of being discharged from his shop altogether. In the spring he is repeatedly called upon to make these sacrifices; but all the other parts of the year he is never certain of one

made the standardization of hours appear to be almost hopeless. Nevertheless the organized tailors have not at any time abandoned altogether the effort to improve conditions in this respect, and it is to this effort, however unsuccessful, that our attention must now be directed.

The earliest official action by the Journeymen Tailors' Union seems to have been taken by the 1884 convention, which declared: "We believe that a permanent improvement of the condition of the wage-working class cannot be effected by any means whatever, unless accompanied by a reduction in the hours of labor."<sup>46</sup> This resolution was reiterated by the 1885 and 1887 conventions.<sup>47</sup> The 1889 and 1891 conventions passed resolutions favorable to reducing hours, and approved the movement of the American Federation of Labor for an eight-hour day in all trades.<sup>48</sup> The 1893 convention condemned the long hours in the trade, and called upon every member to "do all in his power to discourage the practice of working long hours, and wherever it is possible to strive to introduce a ten-hour day."<sup>49</sup> The 1897 committee on laws and audit proposed, and it was approved by the members, that after April 1, 1899, members employed in free workshops should observe a maximum working day of ten hours. A fine of one dollar was provided for each violation.<sup>50</sup> In support of this amendment it was argued that reduction of the hours of labor was necessary on grounds of humanity; that it would increase wages; and that it would lengthen the seasons, putting a stop to "crowding into eight or ten weeks the work that should be spread over four or five months."<sup>51</sup>

week's constant employment.'" Reprinted from Galton, in *The Tailor*, February, 1904, p. 6.

<sup>46</sup> *Constitution*, 1884, p. 13, Resolution No. 2.

<sup>47</sup> *Constitution*, 1885, p. 4, Resolution No. 2; 1887, p. 19, Resolution No. 2.

<sup>48</sup> *Proceedings, The Tailor*, September, 1889, and August, 1891.

<sup>49</sup> As early as 1889 some of the local unions were trying to enforce the ten-hour day. *The Tailor*, September, 1889, p. 1, col. 4, report of general secretary on "Less hours of labor."

<sup>50</sup> *The Tailor*, August, 1897, p. 16, Proposition No. 5. In printing the new constitution the Executive Board assumed that the proposition as passed prohibited Sunday work, although the language used was: "Ten hours per day shall be the maximum that any member of the J. T. U. of A. shall work during any one calendar week day." For amendment as finally printed, see *Constitution*, 1898, Sec. 21.

<sup>51</sup> *The Tailor*, September, 1897, p. 1.

The section setting ten hours as the maximum work day in free shops was modified in 1899 to read: "Ten hours per day or sixty hours per week,"<sup>52</sup> the intention being apparently to allow the members to choose their own day of rest, although it was open also to the construction, that overtime would be allowed on some days, if made up by working less on others. That the latter construction was not intended appears from an amendment passed in 1901, making the section read:<sup>53</sup>

Ten hours per day shall be the maximum that any member of the J. T. U. of A. shall be allowed to work during any one day.

The section remained in this shape until 1905, when the mandatory feature was removed altogether, and the limitation of hours was made entirely optional with the local unions.<sup>54</sup> No further change was made until the 1914 constitution, when all reference to hours on piece work was dropped, and the following substituted, which is the rule now (January 1, 1917):<sup>55</sup>

All local unions of the J. T. U. of A. must have a provision in their agreement limiting the hours of labor to not more than eight hours, for day and week work, with extra pay for overtime, and no new agreements shall be sanctioned by the J. T. U. of A. without such provisions.

The number of unions enforcing the limitation of hours of piece workers was reported on three dates, August, 1899, March, 1900, and January, 1912. On the first date 29 local unions out of a total of 151 were enforcing the ten-hour work day,<sup>56</sup> and on the second date, 25 local unions out of a total of 186.<sup>57</sup> On the third date, 73 local unions out of 308 reported, and of these, only ten were limiting the hours of piece workers.<sup>58</sup> In this

<sup>52</sup> *The Tailor*, August, 1899, p. 16, Proposition No. 3. *Constitution*, 1900, Sec. 21.

<sup>53</sup> *The Tailor*, August, 1901, p. 19, Proposition No. 4. *Constitution*, 1902, Sec. 21; 1904, Sec. 22.

<sup>54</sup> "The J. T. U. of A. shall endeavor by all means in their power to reduce the hours of labor, and such local unions as shall by a two-thirds majority decide to limit the hours of labor shall be supported in such action by the J. T. U. of A." *Constitution*, 1905, Sec. 22; 1908, Sec. 21; 1910, Sec. 21.

<sup>55</sup> *Constitution*, 1914, Sec. 11. This rule does not mean that everybody must work by the day or week, but means that where tailors are employed by the day or week, the agreement must provide for an eight-hour day.

<sup>56</sup> General secretary's report to 1899 committee. *The Tailor*, August, 1899, p. 7.

<sup>57</sup> *The Tailor*, March, 1900, p. 7.

<sup>58</sup> Stowell, *op. cit.*, p. 158.



connection it should be noted that most of the tailors' unions have succeeded in limiting the hours of weekly workers and bushelmen, but that the effort to regulate the hours of piece workers has been an almost complete failure, except in a very few localities. The pressure upon the tailors to make up in the rush seasons for the loss of time in the dull seasons is so great that the limitation of hours is practically impossible.

(e) *Workshops, and the Piece System*

Two systems may be distinguished in the tailoring trade, with reference to the place where the tailor does his work: I. The itinerant system; II. The shop system.

I. The itinerant system. On this system the journeyman tailor works in the customer's home, on goods furnished by the customer.

II. The shop system. This system is subdivided as follows:

1. Employer's shop system: journeyman works in a shop furnished by the employer, either free of charge, or with a charge for "seat-room."<sup>59</sup>

2. Private shop system: journeyman owns or rents shop, or pays for "seat-room" to some other journeyman, or to an association of journeymen who combine to secure working quarters.

3. Home work system: journeyman works in his own home.

In all variations of the shop system, the journeyman works on goods furnished by the employer, and the garment has been cut out by the employer or cutter before the journeyman receives it. When tailors work in private shops or at home, they furnish their own tools and machines, and in many cases where they work in employers' shops, they supply their own sewing machines, press blocks and press stands.

The information necessary for writing a complete history of working systems in the tailoring trade is not at hand, but from scattered sources it appears evident that historically the itinerant system was the first in this country, and that the shop system was in the first instance the result of itinerant tailors' starting shops of their own, and assuming the functions of merchants as well as of journeymen. The itinerant system and the shop systems

\* A variation on this system is the contractor's shop, furnished by a contractor who is a middleman between the merchant and the journeyman.

appear to have continued side by side for a number of years, until gradually the itinerant system became obsolete.<sup>60</sup> The home work system, while undoubtedly it prevailed in England during the early part of the 19th century,<sup>61</sup> and was probably used as early in this country by women engaged on finishing work, appears to have reached its greatest development in the United States following the introduction of the sewing machine. Home work on the part of men tailors in this country seems to have arisen mainly from two conditions: (1) the journeymen could make a larger number of pieces if they were assisted at home by their wives and daughters; (2) by working at home they could work for more than one store, and in that way get more work to do, especially in the dull seasons. The contract system, or "sweating system," as it is called in the trade, lends itself peculiarly to home work. The contractor takes the work in lots from the merchant tailors, and undertakes to get it made anywhere he can, and frequently this means that it is done in the tailors' homes. This system had grown up in all large cities by the time the present national union was organized, and as a result home work was prevalent in those cities. It was not, however, confined to the contract system, but was frequently employed by establishments which gave out their work directly to the journeymen.

Although, for the reasons suggested, many journeymen believed it to be to their interest to work at home, the practice of home work was early recognized as contrary to union ideals, and for twenty years following the foundation of the Journeymen Tailors' Union of America, the question of abolishing this practice, and of obliging the employers to furnish free shops to the tailors, was regarded by the union officers as the foremost question confronting the trade.<sup>62</sup> It was hoped by this reform to

<sup>60</sup> The tailors did not cease to travel, but sought work from established shops rather than from customers in their homes. Cf. article on "Shop-board Traditions," *The Tailor*, June, 1892, p. 2.

<sup>61</sup> "There has been a large portion of the trade, for various reasons, under different circumstances, compelled to work at their homes, if so they may be called—etc." From *The Pioneer*, May 10, 1834. Reprinted in Galton, *The Tailoring Trade*, p. 192; also in *The Tailor*, February, 1904, p. 6.

<sup>62</sup> It is not possible with data now at hand to trace the beginning of this reform in the custom tailoring trade in America. The writer is in-

reduce hours, to regulate the distribution of work and to standardize the general conditions of employment, in a much more effective way than could be done while the system of working at home prevailed. The arguments against home work<sup>63</sup> and in favor of free shops were as follows:

(1) Making clothing at home, particularly in the tenements, is dangerous to the public health, on account of the possibility of disease and infection.

(2) The tailors should not be subjected to the inconvenience, discomfort and expense of turning their homes into workshops, when other trades have shops furnished by the employers.

(3) Working at home makes it difficult, if not impossible, to regulate hours of labor or the distribution of work, and puts men into competition to get the work away from one another. Men will work all night if necessary to finish a rush job or to get more than their share of the work. "This just cause of complaint would be remedied by the adoption of the back-shop system, for the cutters would not give one man all the work when the men were all together, nor would the tailors in the face of their fellows take it."<sup>64</sup>

formed by former Secretary Lennon that in 1883, when the present union was organized, free shops were already the rule in small cities, but there is no complete information to indicate whether the free shop system had existed since pioneer days, or whether it had been won by the activity of tailors' unions. The proceedings and constitutions of national tailors' unions between 1865 and 1875, in so far as these documents have come into the writer's hands (*Cf.* Bibliography) contain only a few references to the shop question, but these tend to indicate that the shop system was well established in small cities, and that the activities of the unions were directed toward preventing members from working outside the shops, and employers from abolishing them. (*Cf.* reports of Springfield, Ill., and Bloomington, Ill., unions, *Proceedings of the Journeymen Tailors' National Trade's Union*, 1874, pp. 11, 15.

<sup>63</sup> The system of private or rented shops, while in a sense a hybrid system, is not, economically speaking, different from the system of home work, but results from the same causes, namely, the desire of the journeymen to work with helpers, and to secure work from more than one store. In the report of the general secretary to the 1897 committee on laws and audit, the "private workshop" is included with the home shop and the sweatshop as one of the institutions to be abolished.

<sup>64</sup> John B. Lennon, article on "Back Shops," *The Tailor*, October, 1888, p. 5. It is usual in free shops to enforce a "turn-list," and the model

(4) A higher quality of work and a greater degree of convenience can be had in the free shops than elsewhere: (a) facilities are better than the tailors can provide for themselves; (b) tailors learn by working with their fellow-craftsmen; (c) the cutter always knows just what condition his work is in, and knows who can lay aside work in hand and take a "rush job;" (d) no time is lost on account of the journeyman being obliged to bring the garments back to the store to be tried on, and to wait for the cutter for new work.

(5) Home work prevents a proper acquaintance between the merchant tailor and the journeyman, and prevents the interchange of information among the journeymen themselves.

(6) Home work causes the employment of more tailors than are needed by each firm, creating a competition that is injurious to the workers.

(7) Home work is demoralizing to the tailors' children; they are kept from school to help "push through" the work; they become accustomed to seeing the father at his work indulge in the use of alcoholic drinks, and learn the habit.

(8) Home work prevents effective union organization, partly by isolating the workmen, and partly by creating jealousies among them, as indicated under other heads.<sup>65</sup>

The above arguments indicate a strong case for the free shops, but arguments on the other side were not lacking. Some of the employers naturally objected to the additional expense of furnishing shops, and obtained a measure of justification for this agreement of the Tailors' Union provides that during the dull season every employee shall have his share of work.

<sup>65</sup> For arguments in detail against home work and in favor of free shops, see articles by John B. Lennon, in *The Tailor*, October, 1888, p. 5, and October, 1889, p. 3; reports of same writer as general secretary, 1889, 1891, 1893, 1897, 1899, 1901; series of articles by Joseph R. Buchanan, on "Free Shops for Free Men," *The Tailor*, April, May, June, July, August, and September, 1902.

*The American Tailor and Cutter*, a fashion magazine, supported the journeymen tailors' side of the free shop question. *The Tailor*, October, 1888, p. 5, cols. 1 and 2. The tailors' campaign was also supported by the Illinois branch of the Consumers' League and by the *Chicago Record*. Cf. *The Tailor*, July, 1900, p. 10, article on "It is Time for the Revolution," reprinted from *Chicago Record*, March 16, 1900; also *The Tailor*, April, 1900, p. 2, circular of Consumers' League.



stand from the fact that the journeymen themselves were not united upon the question. Further attention will be given to this phase of the matter in the course of our account of the efforts of the union to obtain the free shops.

Considerations of the character noted above led the Journeymen Tailors' Union of America as early as 1884 to adopt resolutions condemning the system of home work,<sup>66</sup> and in 1887 a resolution was added against the "sweating system."<sup>67</sup> The 1893 convention directed the officers to see that existing factory laws against sweating be enforced, and called upon the legislative bodies of all states, territories and provinces to pass further legislation looking toward the abolition of the sweating evil. On the subject of workshops this convention recommended that the custom be discouraged of the tailors' bringing intoxicants into the shops, as many employers were refusing to grant free workshops on this account.<sup>68</sup> In addition, it proposed an amendment, for consideration by the members, as follows:<sup>69</sup>

It shall be the duty of the general officers of the J. T. U. of A. to foster the movement for free workshops; it shall also be the duty of each L. U. to endeavor to secure the same as soon as practicable. And when an opportunity presents itself to obtain free workshops they shall make every effort in their power to secure the same.

This amendment was carried.

Prior to 1897 no action was taken to make the movement for free shops compulsory,<sup>70</sup> but in that year an amendment of a more drastic character was proposed by the committee on laws and audit, providing that on and after October 1, 1898, no member of the J. T. U. of A. should be permitted to work at home or in private shops, but that every member should work in free shops furnished by the employers, on pain of a fine of one dollar for each day's violation.<sup>71</sup> Commenting upon this amendment, before the vote was taken, the secretary said:<sup>72</sup>

<sup>66</sup> *Proceedings*, 1884, p. 13, Resolution No. 6.

<sup>67</sup> *Constitution*, 1887, p. 21, Resolution No. 12.

<sup>68</sup> *Proceedings*, 1893, *The Tailor*, August, 1893, p. 11.

<sup>69</sup> *The Tailor*, August, 1893, p. 13, Proposition No. 24, Sec. 144, *Cf.* also *Constitution*, 1894, Sec. 132; 1895, Sec. 131.

<sup>70</sup> The general secretary had recommended in 1893 that working in free shops be made compulsory on May 1, 1895, but the convention did not see fit to go further than the amendment already noted.

<sup>71</sup> *The Tailor*, August, 1897, p. 16, Proposition No. 4.

<sup>72</sup> *The Tailor*, September, 1897, p. 5.

In its probable effect upon our unions and upon the welfare of our craft, No. 4 is, no doubt, the most important amendment approved by the Committee. Upon the securing of free work shops depends the securing of every reform advocated by members of our craft.

The amendment was carried by a vote of 1,776 to 597.<sup>73</sup>

As a preliminary to the enforcement of the amendment on the subject of free shops, Secretary Lennon sent out a circular to all unions, in which each was requested to answer the following questions:

1. Total number of members in local union;
2. Number of members working in employers' back-shops;
3. Number of members working outside;
4. Will your local union be prepared to demand free back-shops October 1, 1898?
5. Will a strike probably be necessary to enforce free back-shops?
6. Amount of funds in local treasury.

Returns were due April 1, 1898. Returns from a number of cities were late, but by September, 1898, it was possible to publish returns from all but nine local unions; i. e., from 202 out of 211 locals.<sup>74</sup> For the 202 locals reporting the returns were as follows:

Total number of members.....	5,061
Number of members working in employers' back-shops.....	1,991
Number of members working outside.....	3,070

On the fourth and fifth questions the returns were characterized by the secretary as "indefinite." A few locals failed to answer the sixth question, but as many as answered reported a total of \$4,003 in local union treasuries. Concluding his comment upon the returns, the secretary said:

The question of securing free back-shops is now in the hands of the members of the J. T. U. of A. The general officers cannot enforce this law, and will not be responsible if it is not enforced, as this is something over which they have absolutely no control. The local unions, if they will act with discretion . . . and by committees consult and confer with the employers of their respective cities, can obtain the free back-shops, in the most cases within a short period of time, without any strikes.

The subsequent history of the movement for free shops is one of partial failure and partial success. It was found impossible to enforce strictly the mandatory provisions, and these provisions were accordingly modified. The section placing a fine on

<sup>73</sup> *The Tailor*, November, 1897, p. 8.

<sup>74</sup> *The Tailor*, September, 1898, pp. 8-9.

members for working outside of the free shops lasted only two years, being replaced in 1899 by the following amendment:<sup>75</sup>

On February 1 and July 1 of each year the G. E. B. shall designate one or more local unions to demand from their employers free back shops. No L. U. shall be selected until by a majority vote the L. U. have shown that they are prepared and favor free back shops. Locals so designated shall be sustained by the J. T. U. of A. if a strike becomes necessary to enforce the demand. Unions so selected by the G. E. B. shall enforce the demand within 60 days from February 1 or July 1. The usual two-thirds majority shall be required to call the members out.

Some progress was made under the amendment of 1899. In 1901 a more elaborate plan was adopted than any hitherto proposed. The country was divided into five districts, numbered in the order of the difficulty which was anticipated in enforcing the free shops.<sup>76</sup> Local unions in the first district, in which conditions were regarded as the most favorable, were to enforce free shops April 1, 1902; in the second district, September 1, 1902; in the third district, April 1, 1903; in the fourth district, September 1, 1903; and in the fifth district, April 1, 1904. The following provision was added:

Nothing in this section shall be construed to prevent any local union from enforcing free shops at any time they are prepared. The G. E. B. shall have power under this section to exempt any local union temporarily from the requirements of this section when found necessary.

This general plan remained in force until 1905. In 1903 the following modifying provisions were added:<sup>77</sup>

<sup>75</sup> *The Tailor*, August, 1899, p. 16, Proposition No. 2, *Constitution*, 1900, Sec. 20.

<sup>76</sup> *The Tailor*, August, 1901, p. 19, Proposition No. 3. The districts were as follows:

*First district:* Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas, Indian Territory, Oklahoma Territory, Kansas, Nebraska, South Dakota, North Dakota, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, California and Nevada.

*Second district:* All of Canada.

*Third district:* Wisconsin, Michigan, Illinois, Indiana, Ohio, Kentucky, Mississippi, Alabama and Tennessee.

*Fourth district:* Pennsylvania, West Virginia, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia and Florida.

*Fifth district:* New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine.

<sup>77</sup> *The Tailor*, September, 1903, p. 1, Proposition No. 3; *Constitution*, 1904, Sec. 21.

Each local union after investigation by a committee, when the evidence warrants, shall have the power to excuse any member from working in the free shops. A two-thirds majority shall be required in each case.

The use of the label shall not be permitted on the work of any firm after January 1, 1906, that does not furnish a free shop.

In 1905, the following sections were substituted for the whole:<sup>78</sup>

All local unions that have not secured free back-shops shall do so as speedily as possible, but each local union shall be the sole judge of when it is safe and expedient to resort to extreme action to secure them. If any local union desires to strike for free back-shops, a two-thirds majority shall be required. Said action must be in accordance with sections 75 and 76 governing strikes and lockouts.

*Resolved:* That the J. T. U. of A. in conjunction with A. F. of L. do all in their power to abolish home work through legislation.

It will be observed from the amendments noted above that the original mandatory rules on the subject of the enforcement of free shops were materially relaxed. The reasons for this seem to have been twofold: (1) the fact that the members were not united in demanding the free shops, a considerable number refusing to work in them; (2) the growing conviction on the part of the officers that home work was an inevitable consequence of the piece system, and that the attention of the union should be turned to the abolition of the latter system. In his 1901 report<sup>79</sup> Secretary Lennon said:

I regret to say that we still have quite a considerable minority of our members who are opposed to having free shops furnished by the employers.

And in his 1905 report:<sup>80</sup>

While the piece system of work so largely prevails in our trade, it appears as though it will be almost impossible to completely enforce the free shop system, and this more because of the opposition of the journeymen tailors, than from the opposition of the employers. To work at home gives the journeyman tailor an opportunity to work for several different establishments, and they believe as a rule that this is an advantage to them, and believing that, it is almost an impossibility to persuade or force every one into the free shops. I believe, however, that it is absolutely essential for the progress of our craftsmen that we continue to stand for the enforcement of the free shop, and that wherever it be possible our unions establish this system in their respective communities. When the time comes that the piece

<sup>78</sup> *The Tailor*, March, 1905, pp. 2, 5, Propositions 2, 41; vote, May, 1905, supplement; *Constitution*, 1905, Sec. 21.

<sup>79</sup> *The Tailor*, August, 1901, p. 5.

<sup>80</sup> *The Tailor*, February, 1905, p. 7.



work system is supplanted by daily or weekly wage rates, then the free shops will become universal at once, and so anxious was I for the application of the free shops that I have no hesitation in saying that I believe beyond the shadow of a doubt that working by the piece is perhaps the greatest possible injury that could be perpetrated upon our craftsmen throughout the length and breadth of the world. It is unfortunate that we have permitted it to become so prevalent, and it is more unfortunate that a great majority of our members are favorable to piece work. The history of the labor movement and of the industrial world has demonstrated clearly that long hours are almost the universal concomitant of piece work, and it equally shows that long hours are accompanied by low wages. We want the free shops because the tailors need better wages. Better wages in the main cannot be had without a reduction of the hours of labor, and the reduction of the hours of labor cannot be expected to any very great extent while the piece work system prevails in the tailoring industry, and it seems to me, therefore, that we should turn our attention with all the vigor possible to creating among our members a sentiment favorable to working by the week.

The official reports of Secretary Lennon in 1907 and 1909, and of Secretary Brais in 1913,<sup>81</sup> indicated little change in the situation since 1905. In each of these reports the fact was emphasized that many of the Journeymen Tailors themselves were not favorable to the free shops. In the 1907 report it was stated that even in some cities where the free shops had been secured, they were lost again on account of the opposition of the Tailors. In the 1909 report the opinion was expressed that the new system of making custom clothing in factories would mean free shops and the limitation of hours, and that thus far the new system was to be commended. The 1913 report is quoted, as the latest official statement on this subject:

It is true that a great many of our members enjoy free back shops, but the home work system is still an established custom and many members of the J. T. U. of A. do not want to change it. They are satisfied and will not do anything to change it. They favor the free back shop as a principle adopted in their constitution, but when it comes to enforcing it, it is a joke.

The piece work system must go before any real progress can be made in our trade. Both the home work and the piece work systems are conducive to long hours of labor; child labor; sweat shops; contract systems; cheap labor; low wages and a general deterioration of the health of the workers.

The net results of the campaign for free shops between 1898 and 1905 may best be indicated in tabular form, as follows:

<sup>81</sup> *The Tailor*, August, 1907, p. 4; August, 1909, p. 10; August, 1913, p. 12.

	<i>Total membership (est.)</i>	<i>In free shops <sup>82</sup></i>	<i>Outside</i>	<i>Per cent in free shops</i>
September, 1898	5061	1991	3070	39
July, 1899	6217	2627	3590	42
July, 1901	9727	4200	5527	43
July, 1903	14496	8367	6129	58
January, 1905	14100	8000	6000	57

Returns from a limited portion of the membership were also received in 1912, indicating conditions on January 1 of that year. In 71 cities reporting, there were 5,366 union members, and of these 2,308, or 43 per cent, were working in free shops. The returns represented only 23 per cent of the local unions and 39 per cent of the membership, and since, of the 5,366 members reporting, 4,047 were in large cities (over 100,000), the returns probably are not representative of the situation throughout the whole country. Of the 4,047 members in large cities, 1,253 were in the free shops, or 31 per cent; while of 1,319 members in cities of less than 100,000 population, 1,055 were in the free shops, or 80 per cent. It should not be concluded from this, that the percentage of members in free shops is low in all large cities. There are some notable exceptions; for example: St. Paul, Winnipeg, Portland (Ore.), Seattle, Milwaukee, Atlanta, and San Francisco.<sup>83</sup>

Referring to conditions at the present time (1917), the writer is informed that little effort is being made to force members by means of fines to work in the free shops.<sup>84</sup> The model form of agreement between local unions and employers<sup>85</sup> provides that where free shops exist, all work shall be done on the employer's premises, and where the local unions have this form of agreement with employers furnishing shops, home work is automatically prevented. The most important movement against home work recently made was the attempt of the New York union in 1916 to secure free shops, increased wages and the employment of union men only. This strike was lost by the union, and led to a considerable loss of membership in New York City.

<sup>82</sup> Estimated by Secretary Lennon from incomplete returns from local unions. Cf. *The Tailor*, September, 1898, pp. 8-9; August, 1899, p. 7; August, 1901, p. 5; August, 1903, p. 4; February, 1905, p. 7.

<sup>83</sup> Cf. Stowell, *op. cit.*, p. 157, and table, pp. 151-155.

<sup>84</sup> Secretary Thomas Sweeney, correspondence, January 24, 1917.

<sup>85</sup> Cf. *supra*, note 22.

The attitude hostile to the piece system indicated by Secretary Lennon in 1905 was endorsed by the union in 1909, and again in 1913.<sup>86</sup> Nevertheless the substitution of the weekly system for the piece system is proceeding but slowly. As in the case of the free shops, the movement is retarded by individual journeymen and employers who prefer the old system. The piece system appeals to employers because it is easy to adjust to seasonal irregularities, and because it facilitates the calculation of costs. It is also favored by many of the journeymen, because they think they can make more money under this system, and because they do not like the confinement of a shop and fixed hours. The movement for the abolition of the piece system is likely to

<sup>86</sup> The following resolution was submitted by the 1909 convention and approved by referendum vote:

“Resolved: That we recommend to all our members the substitution of the weekly system of work instead of the piece system.”

In 1913 a declaration in favor of eliminating the piece work system was added to the preamble of the constitution. Cf. *The Tailor*, August, 1909, p. 44, Proposition No. 40, Sec. 5; vote: November, 1909, supplement; *Constitution*, 1914, Preamble.

The movement against the piece system was not new at these dates, but beginning in 1905 appears to have been given greater prominence as a reform necessary before other reforms could be carried out. As early as May, 1886, the *American Tailor and Cutter* expressed the opinion that the piece work system was mainly responsible for existing troubles in the tailoring trade, and in 1889 Secretary Lennon declared that the piece system was the greatest evil in the trade except the lack of free shops. *The Tailor*, October, 1888, p. 5, col. 2; December, 1889, p. 4, col. 2.

The characteristic trade union argument against the piece system appears very clearly in the following extract from an article by P. Ewald Jensen, a tailor of Chicago, in *The Tailor*, May, 1892, p. 5:

“Piece work, as a system to work by, has in the past history of labor proven itself to be detrimental to the best interest of the wage earners, because its natural tendency is to lower wages. This is brought about for the simple reason that piece work wages as a rule are gauged by the producing power of the ablest, the superior mechanic, consequently the slow or inferior mechanic or laborer is thereby degraded into starvation wages. Whenever a reduction in prices takes place, we find the superior workman who is capable of exerting himself even more so prompted by said reduction, doing all in his power to maintain his former wages by tasking his system to its utmost capacity. The employer, seeing this, will, as the case is, further reduce the price on the piece work, and wages thereby are lowered to its death line. The inferior workman is thereby put to a level with the beggar, he having no choice in the matter, simply to submit.”

make the most headway where team systems and sectional systems of production,<sup>87</sup> which nearly always involve payment by the week, are being installed upon the initiative of the employers. The situation at present may be illustrated by the following report from Denver, Colorado:<sup>88</sup>

The union has succeeded in introducing in some shops the weekly pay scale, where the tailors enjoy a nine hours' work day, double pay for holidays, and time-and-a-half for overtime. This alone gives good hopes that the rest of the shops will soon fall in line.

Since the weekly pay system is not introduced in all the shops, a friction exists between some of our brothers. Some piece workers do not quite understand the benefits which week workers derive under their system. They think they are a kind of obstruction to their own progress, and therefore try to blockade by denouncing the week workers. On the other end, the week workers who are satisfied with their present conditions want the piece workers to join them, and thereby better their conditions.

The Denver correspondent indicates further that another cause of friction is the effort to adjust the wages of helpers of ments of this character will probably be difficult until the weekly workers, whose helpers are paid by the employers, so that neither class of workers will have the advantage of the other. Adjustments of this character will probably be difficult until the weekly system is completely established, and this, in the writer's opinion, will not take place for a number of years to come.

It is interesting to note the curious evolution of opinion which has taken place with reference to the system of payment. Time payment was the rule in England during the period of parliamentary regulation, and the English tailors struck against piece work when it was first introduced.<sup>89</sup> But piece work seems to have been the rule in America since an early date,<sup>90</sup> and it is only recently that the American tailors are getting back to the old idea of time payment.

The campaign of the Tailors' Union for free shops and the abolition of the piece system, cannot, in view of the results, be regarded as a complete failure. Nevertheless, it is a good illustration of the difficulty which is encountered, both in civic communities and in labor organizations, of enforcing by means of

<sup>87</sup> Cf. Stowell, *op. cit.*, 29-32; also *infra*, pp. 51-52.

<sup>88</sup> *The Tailor*, March 13, 1917, p. 3, col. 2, letter from Goodman Levin.

<sup>89</sup> Cf. Stowell, *op. cit.*, pp. 14-16.

<sup>90</sup> *Ibid.*, pp. 17-18.



laws and rules reforms to which a considerable minority are opposed.

(f) *The "Efficiency" Movement*

The modern movement for "efficiency" or "scientific management," in so far as it concerns the workers in the tailoring industry, has taken two principal forms: (1) improved methods of cost accounting, particularly with reference to labor costs; (2) changes in the system of production.

(1) Improved methods of labor cost accounting. Only a limited number of cost schedules used in, or suggested for, the merchant tailoring business have come to the writer's attention, and it is difficult to perceive in these any general principle for the calculation of labor costs. As a rule the labor cost rises with the selling price of the suit, but not in a fixed proportion, the percentage of labor cost to selling price varying considerably in the schedules the writer has seen. In some of these schedules apparently the selling price is determined first, and the "overhead" being regarded as constant (about 25 per cent), the accountant proceeds to figure what costs for material and journeymen tailors' labor he can afford for a suit of the given price, if a given percentage of profit is to be realized. In other schedules all costs are determined first, and the selling price is adjusted to yield the desired percentage of profit.

It will be recalled that the official bill of prices of the Tailors' Union recognizes only two classes of piece rates for the same kind of garment. For example, in the bill of prices of the Burlington, Iowa, local union, dated 1906, which follows closely the form of the official bill, the scale for sack coats is as follows:

	<i>1st class</i>	<i>2nd class</i>
Double-breasted sack coat.....	\$8.00	\$7.50
Single-breasted sack coat.....	7.50	7.00

This scale gives the price for "start" of the coat. There is in the Burlington bill a charge of 50 cents extra for trying on the coat, and if there are any "extras" or fancy additions to the plain pattern, something is added to the piece price on account of these "extras." The basis of classification as between "1st class" and "2nd class" is the kind of material of which the garment is made. This is a different kind of schedule from that usually proposed by efficiency experts, which, whatever the prin-

ciple employed, may yield as many as seven or eight classes of labor costs for a range of selling prices of suits, say from \$35 to \$70. Upon the general idea of piece rates graduated according to selling prices, the Tailors' journal has the following to say:<sup>91</sup>

We have no hesitation in saying that the Journeymen Tailors' Union of America will not commit itself to any such plan, the plan being wrong in principle. Wages cannot be fixed by the selling price of suits. If that was admitted as a sound rule, it would also be sound to make suits for nothing in case the employers saw fit to give suits away free of charge.

(2) Changes in the system of production. Under what is known among tailors as the "old-line" system, each garment is made by a specialist, coatmaker, vestmaker, or trousersmaker, who has served an apprenticeship or undergone an equivalent training for his own particular branch of the trade. The skilled journeyman may finish the entire garment himself, or he may turn over a portion of the work, requiring less skill, to his helper. There are variations in the system due to the employment of more than one helper, but in such cases the tailor and his several helpers do not constitute a "team," in the sense that a different kind of work is assigned to each helper, unless the tailor is an unusually capable organizer and manager. In any case, the subdivision of work is under the control of the journeyman, and not under the control of his employer; and it frequently happens that the journeyman is engaged on processes which could be carried on by workers of less skill and of a shorter period of training. It was no doubt the observation of this fact which led to the devising of new and different systems of production.

Under the new systems, the aim is to employ the services of the highly skilled tailor only on those portions of the work where they are absolutely needed, the balance being turned over to operatives, each of whom is skilled in some one of the finishing processes. In the most highly developed form of this system there is no such thing as a "skilled coatmaker," for example. Each employee is a specialist upon some section of the coat. All employees, including the lowest paid helpers, are paid by the employer, and the subdivision of labor is under his supervision, or that of the cutter or foreman whom he hires. The establishment of the new systems involves almost invariably the establish-

<sup>91</sup> *The Tailor*, April 3, 1917, p. 3.

ment of a workshop by the employer and the payment of all employees by the week instead of by the piece.

It is obvious that unless the volume of custom tailoring to be done increases on account of improved methods, decreased costs and lowered prices, the new systems require the services of fewer skilled journeymen than before. Like the workers in other trades in which similar changes were taking place, the tailors fixed their attention upon the immediate consequences rather than upon the ultimate consequences of the change, and tried to oppose it.<sup>92</sup> However, so little success was met with that finally it became the policy of the national union not to support strikes for this purpose, as long as there was any possibility of securing an agreement between the employers and the union for the government of the new system after it was started.<sup>93</sup> It was not always possible to re-employ all of the journeymen, but frequently some of them could be re-employed, and this was considered better, provided union conditions could be had, than a strike. It has already been noted that in so far as the new systems tend to accelerate the movement toward the time system of payment and free workshops, they are not regarded as a disadvantage by the union officials.

<sup>92</sup> The contest with the firm of Gray and Graham, Dallas, Texas, in 1903, is a good example of a contest arising out of the change of system. This firm appears to have dispensed with the services of union men altogether, in order to have a free hand for the introduction of the team system, and for this reason the tailors referred to the contest as a "lockout." However, the contest would not probably have arisen if the union had not been opposed to the new system. The firm in question employed before the lock-out about forty journeymen, and paid a good piece-scale: coats \$8.00 and upward, pants \$2.75 and upward, vests \$2.50 and upward. After introducing the new system they employed about 50 people in the operating department, only about four of whom were highly skilled workers, the balance being operatives who had learned specialized processes. All employees were paid on a time basis. The wages in 1911 ranged from \$3.00 to \$15.00 per week. (Correspondence with local union, 1911.) The union was not successful in preventing the establishment of the new system, which, so far as the writer knows, is still in operation.

<sup>93</sup> *Constitution*, 1914, Sec. 82: "No strike shall be supported where the employer desires to change from the piece system to the weekly system, where conditions are satisfactory to the employees." The last clause is somewhat ambiguous, but is interpreted by the writer to mean, "where conditions are satisfactory to as many of the union men as can be re-employed," regardless of the feelings of those who are displaced.

*(g) Regulation of Helpers and Apprentices*

Since, in a majority of cases, the tailor's helper or apprentice is employed by the tailor himself, the regulation of helpers and apprentices is a matter almost wholly internal to the union, and not subject to collective bargaining with the employers. The only exceptions to this rule occur where the employer takes the initiative in trying to induce journeymen to take apprentices, or where a weekly system has been established, placing helpers and apprentices under the employer's control. The whole subject of the regulation of helpers and apprentices will therefore be discussed in a separate chapter, and the limited connection of the subject with collective bargaining will be taken up in that chapter.

## 4. STRIKES AND LOCKOUTS

*(a) Definitions*

*Strikes.* The term "strike" is familiar, and scarcely requires definition. In general a strike implies that the initiative in the dispute leading to a cessation of work is taken by the workmen.

*Lockouts.* The term "lockout" is used somewhat indiscriminately in the tailoring trade, to indicate any of the following situations:

(1) All union members discharged, and declaration made by employers that no unionists will be employed.

(2) One or more unionists discharged, on account of special activity in the union.

(3) Unionists permitted to remain at work, provided they will bargain as individuals; employers refuse to sign any agreement with union.

The question as to whether a disturbance is a strike or a lockout has come up in connection with the applications of local unions to the General Executive Board for support. In such cases the first situation named has always been recognized as a lockout. The second case might be regarded as a partial lockout, but it is more usual to refer to the members discharged as "victimized." While recognizing that "victimized" members have a grievance, the union has not as a rule demanded their reinstatement by the employer, but has simply aided such members from the strike benefit fund until they could get work elsewhere.



As to the third case, it may be regarded as nearly equivalent to the first, as the employers know that as a rule the members will not work under these conditions. However, technically speaking, it is better to regard a disturbance growing out of this case as a strike for enforcing the system of collective bargaining, rather than as a lockout.

Closely connected with the situations named above are those where the employers refuse to employ unionists under any circumstances, or where they demand an agreement from prospective employees that they will not join a union. These are to be regarded as phases of the "black-list."

If the above distinctions are followed, the greater number of the important controversies that have taken place in the tailoring trade can be brought under the head of "strikes."

#### *(b) General Strike Policy of the Union*

From the very beginning it has been the policy of the national union to maintain centralized control of strikes. The principal aid to maintaining this kind of control is the fact that the strike benefit fund is governed by the national union. Before granting support to any local union it has been customary to make the following requirements:

(1) A genuine effort must be made by the local union to settle the controversy by negotiation with the employers, before calling a strike. If such negotiation fails, a secret vote of the union is to be taken as to whether the members involved shall be called out and supported, a two-thirds vote to decide.

(2) Before any strike is actually begun, full information must be sent to headquarters, indicating the cause of difficulty; the number of members likely to be involved; the likelihood of all such members responding to a strike call, if it is ordered; the condition of trade, and the prospects of success. No members must be called out until permission has been received from the General Executive Board. Failure to observe this provision debars the local union from the receipt of benefit, and any strike undertaken without the sanction of the Executive Board must be carried on at the risk and expense of the local union.

(3) As a rule the union is requested to delay radical action and to keep the members at work until a representative of the

national union can be sent to the city to endeavor to secure a settlement. Many strikes have been avoided in this way, the services of the national organizers in helping to settle local controversies being fully as important as their strictly organizing duties.

The essentials of the policy outlined above may be found in the earliest constitutions of the national union,<sup>94</sup> and with some modifications have been continued to the present date.

### (c) *Strike Benefit*

Members who are on a strike which is legal under the constitution and approved by the Executive Board receive from the national union the sum of five dollars per week. No strike benefit is paid for the first week of any strike, nor for any strike involving one-third or more of the members of the J. T. U. of A.<sup>95</sup>

The expenditure for strike benefit since the union was founded has been larger than for any other single item. In the period beginning August 15, 1887, and ending June 30, 1916, the total amount expended for strike benefit was \$565.089.44.

In addition to the national strike benefit, there are three sources of income upon which local unions involved in severely contested strikes have relied for support: (1) local strike benefits; (2) donations from other local unions affiliated with the J. T. U. of A.; (3) donations from unions in other trades.

(1) Local strike benefits. Local strike benefits may be paid from funds accumulated in the local treasury, or, in cases where all of the members of the union are not involved in the strike, the benefits may be raised by assessment upon the members remaining at work. The general officers have discouraged unions from attempting to pay local strike benefits, on the ground that it may be impossible to keep up the payments throughout the strike, or to make them in every strike, and in such a case members are disappointed and have an excuse for deserting the union.<sup>96</sup>

<sup>94</sup> Cf. By-laws of 1884, Articles 12, 13.

<sup>95</sup> *Constitution*, 1914, Secs. 83-84. In case of emergency, due-bills may be issued for the strike benefit. (Sec. 87.) Other sections governing the strike benefit are Secs. 90, 91, and 93.

<sup>96</sup> *The Tailor*, April, 1901, p. 8, third editorial; October, 1903, p. 17, article on "Local Strike Benefits."

(2) Donations from other local unions affiliated with the J. T. U. of A. In the case of severely contested strikes involving enough members to put a strain upon the national treasury, appeals have been sent out to the local unions not affected by the strike. These appeals upon the whole have met with success, and large amounts of money have been raised in this way.

(3) Donations from unions of other trades. Appeals for donations from other trades are handled through the American Federation of Labor, and must be endorsed by that body. It has been necessary to resort to this method of raising money on only a few occasions, the most important being the contests between the Tailors' Union and the Merchant Tailors' Protective Association in 1903 and 1904, involving the locals in Denver, Kansas City, Cleveland, and some other cities. In the course of these contests the sum of \$5,524.32 was raised through the American Federation of Labor for the assistance of the tailors.<sup>97</sup> The Federation also gave assistance to the tailors and certain other trades who were locked out in Los Angeles in 1907.<sup>98</sup>

#### (d) *Detailed regulation of strikes*

The full text of the regulations on the subject of strikes and strike benefit is found in the constitution, 1914, Sections 79-95. In addition to the points discussed above, the most important provisions are as follows:

(1) After a union has complied fully with the constitution and has voted to strike, the General Executive Board has the power either to sustain the local union or to refuse to sustain it. If the Executive Board refuses to sustain the local union, an appeal may be taken to the general membership, and if the appeal is sustained by a majority of the members voting, the local union shall be sustained by the Executive Board.<sup>99</sup>

(2) No local union can receive strike benefit where it has broken an existing agreement with employers.<sup>100</sup>

<sup>97</sup> Cf. copy of A. F. of L. resolutions endorsing Tailors' appeal, *The Tailor*, December, 1903, p. 21; also financial statements in *The Tailor* for the months November, 1903, to May, 1904, inclusive.

<sup>98</sup> *The Tailor*, November, 1907, p. 12; December, 1907, p. 1. The assistance in this case took the form of contributions to the organizing funds of various unions in Los Angeles, but was occasioned by the lockouts.

<sup>99</sup> *Constitution*, 1914, Secs. 81, 82.

<sup>100</sup> *Constitution*, 1914, Sec. 90.

(3) The Executive Board has power to terminate the payment of strike benefit to a local union, if in the judgment of the board the strike should cease, but this action of the board is subject to an appeal to a general vote, to the next convention, or to the committee on laws and audit.<sup>101</sup>

It has been found that if a strike is to be won at all, it should be won quickly. The longer it continues, the greater is the opportunity of the employer to replace the men and get his work done. The Lennon administration was accustomed to advise locals that as soon as it became evident that a strike could not be won, it should be called off at once, and the members allowed to go to work. It was found that there was a disposition after a strike was lost for the local union to boycott the employer and refuse permission to its members to work for him. This policy was discouraged by the administration, on the ground that it would be better to allow the members to go to work and make an effort to unionize the store again. Another question of great importance in strikes is the question of members on strike going to work in other stores or leaving the city. This practice has been strongly condemned by the general officers, on the evident ground that it is impossible to maintain a strong front if the strikers are dropping away one by one. The policy advised has been to make a brisk contest with the aid of all the members involved, and then if defeat is in sight, to call off the whole affair at once. Obvious as this course seems to be, it is surprising how hard it has been found, when men's stubbornness was aroused, to get a strike called off.

Members on strike are not left to their own devices and without supervision. They are required to report regularly to the officers, and are assigned various duties connected with the strike, such as picketing and committee work. Every effort is made to give businesslike efficiency to the strike.

#### *(e) Enforcement of strike regulations*

During the period when the conduct of the general office was under the writer's direct observation, there was no instance in which a strike in violation of the constitution was overlooked by the general secretary. In every such case the union was reminded sharply of its neglect to follow the usual rules, and was

<sup>101</sup> *Ibid.*, Sec. 93.



given to understand that it was only by a special dispensation that the Executive Board could consider its case at all; and in a number of cases support and strike benefit were refused altogether. Carelessness on the part of local unions in this respect has called forth more than one vigorous warning in the columns of the official journal.<sup>102</sup>

(f) *Avoidance and settlement of strikes*

The development of new and cheaper systems of tailoring, and the presence in the country of large numbers of workers who could take the place if necessary of skilled custom tailors, have made discretion peculiarly necessary on the part of the Tailors' Union. For many years it has been the policy of the responsible officers to oppose absolutely beginning a strike unless there are reasonable prospects of success. The writer has seen many letters from headquarters to local unions, implying strongly that the central office, with its wider viewpoint, was in a position to perceive dangers not visible to the locals, particularly the presence of potential strike breakers in neighboring localities. Another maxim that has been strongly insisted upon at headquarters has been: "Never break off negotiations." The general office, by sending national organizers or committees from neighboring towns, has always made every effort possible to secure the settlement of strikes.

It has not happened very frequently that state or federal officials have intervened in tailors' strikes, as these strikes are not usually of sufficient magnitude to attract outside attention. It is a matter of interest, however, that the first case considered by the new industrial commission of Colorado was a case involving the journeymen tailors of Denver and their employers.<sup>103</sup> The journeymen tailors' union of Denver having presented demands to the employers, an extended hearing was had before the industrial commission. The necessary papers calling for an inves-

<sup>102</sup> Cf. *The Tailor*, September, 1897, p. 12; March, 1902, p. 11.

<sup>103</sup> The Colorado law provides for investigation of industrial disputes by the industrial commission, and makes it a misdemeanor for the union to declare a strike or the employers a lockout prior to or during the investigation, provided the industry is "affected with a public interest." Cf. text of law in *Bulletin of U. S. Bureau of Labor Statistics*, Whole No. 186, pp. 105-118.

tigation were filed with the commission about September 30, 1915, and a reprint of its findings is found in *The Tailor*, May 23, 1916. The grievances of the tailors, as quoted in the commission's report, were as follows: Low wages; long hours; employers not furnishing trimmings; time lost on try-ons; lack of sanitary shops; bad light and bad ventilation; no standard price for tailors' labor, compelling tailors to compete against each other at very low wages; demand for extra pay for extras, overtime and alterations; demand for recognition of the union. In its report the commission found that the demands of the journeymen tailors were "substantially just." Some specific recommendations in the report are as follows:

(1) Increase in the size of tailoring establishments, so that employers can afford to furnish good shops and pay good wages.

(2) Prohibition by state or federal law of the manufacture of clothing in the tailors' homes.

(3) Inauguration of the "team system" of production, permitting subdivision of work and regulation of hours.

(4) Establishment of a definite and uniform scale of wages and a nine-hour day.

The commission's report on conditions in Denver applies remarkably well to other localities throughout the country. The following passage is especially significant:

The ramifications of the tailoring industry are so vast and varied as to make this business more complex and difficult to handle than probably any other proposition in the United States. One prolific source of trouble and one hard to eradicate is the fact that with a capital of \$100 or \$200 many a business is launched. This insufficiency of capital handicaps the new adventurer in this business. In the first place he has to pay about 50 per cent more for his goods on account of having to buy in small quantities. The heavy interest charges paid on borrowed capital, high rental for stores, etc., etc., is so enormous and burdensome that many good intentioned and industrious men lose their little all, while those remaining eke out but a precarious and miserable existence. With one, two or three tailors working in such establishments, it would be utmost folly to expect that the conditions of the tailors could be anything other than hard and that the pay must of necessity be small. Because of the facts that the business can be carried on in the home where the family may assist in the piece work system, and that the hours, wages, etc., are not up to the standard of other artisans, American labor has not been attracted to this branch of business. In Denver not one American born tailor is employed. This being so does not relieve society of responsibility, but makes action to improve conditions

the more imperative on all. The evidence before us shows that during the busy season it is not at all unusual, but is in fact the universal custom, for tailors to work from six-thirty a.m. until nine, ten and eleven o'clock at night. It is a sad commentary on American institutions to think that human beings could be on such a plane in this enlightened day. Working under such a system is inimical to society and almost any reasonable action would be justifiable for its elimination.<sup>104</sup>

On the subject of recognition of the union, the commission stated that of necessity it must recognize labor organizations as representing employees in hearings before the commission, but that this ruling does not affect in any way the recognition or non-recognition of the union by any employer.

Largely as the result of the commission's findings, twenty-four merchant tailors of Denver signed agreements with the union, calling for a nine-hour day and the "back shop" system. Only one firm, an agency firm with headquarters and factory in Chicago, refused to sign the agreement. While some dissatisfaction was expressed by the journeymen over delay in rendering the decision, the findings of the commission were very well received by the men and regarded by them as a victory.<sup>105</sup>

<sup>104</sup> *The Tailor*, May 20, 1916, p. 1, col. 4.

<sup>105</sup> *The Tailor*, March 21, 1916, p. 1, col. 4; p. 4, col. 4.

(g) *Statistics of Strikes**Strikes and lockouts in the tailoring trade, 1881-1916*<sup>106</sup>

PERIOD	Number of Strikes	Won or Compromised	Lost	Members Involved	Members Benefited	Members Not Benefited	Per Cent Benefited of Total Involved	National Strike Benefit Paid
Jan. 1, 1881 - Dec. 31, 1886...	35	23	12	2476	1886	590	76	
Aug. 15, 1887 - July 31, 1889..	40	35	5	.....	.....	.....	.....	\$ 3,438.00
Aug. 1, 1889 - July 31, 1891..	219	185	34	.....	.....	.....	.....	14,683.01
Aug. 1, 1891 - June 30, 1893..	150	135	15	.....	.....	.....	.....	24,369.25
July 1, 1893 - June 30, 1895..	.....	.....	.....	.....	.....	.....	.....	27,485.05
July 1, 1895 - June 30, 1897..	.....	.....	.....	.....	.....	.....	.....	12,565.95
July 1, 1897 - June 30, 1899..	40	33	7	1263	1216	47	96	4,371.00
July 1, 1899 - June 30, 1901..	78	72	6	1846	1423	423	77	28,463.25
July 1, 1901 - June 30, 1903..	113	113	0	1862	.....	.....	.....	34,262.50
July 1, 1903 - Aug. 31, 1903..	.....	.....	.....	.....	.....	.....	.....	9,014.00
Sept. 1, 1903 - Aug. 31, 1904..	24	18	6	1142	340	802	30	44,315.00
Sept. 1, 1904 - Aug. 31, 1905..	22	16	6	641	397	244	62	11,414.00
Sept. 1, 1905 - Aug. 31, 1906..	16	14	2	800	735	65	92	9,676.50
Sept. 1, 1906 - Aug. 31, 1907..	22	19	3	1810	1400	410	77	21,275.00
Sept. 1, 1907 - Aug. 31, 1908..	21	16	5	400	.....	.....	.....	78,613.85
Sept. 1, 1908 - Aug. 31, 1909..	18	15	3	500	420	80	84	12,960.50
Sept. 1, 1909 - Aug. 31, 1910..	17	12	5	706	588	118	83	6,580.00
Sept. 1, 1910 - Aug. 31, 1911..	13	8	5	169	139	30	82	9,901.00
Sept. 1, 1911 - Aug. 31, 1912..	11	6	5	504	.....	.....	.....	52,134.10
Sept. 1, 1912 - Aug. 31, 1913..	23	21	2	728	.....	.....	.....	57,877.68
Sept. 1, 1913 - Aug. 31, 1914..	7	7	0	.....	.....	.....	.....	12,026.85
Sept. 1, 1914 - Aug. 31, 1915..	5	5	0	50	15	35	30	6,400.00
Sept. 1, 1915 - Aug. 31, 1916..	12	8	4	1725	700	1025	60	57,163.50

<sup>106</sup> *Source of accuracy.* The figures for the first period, covering six years from 1881 to 1886, inclusive, are taken from the third annual report of the United States commissioner of labor, published in 1887. These figures cannot be regarded as exhaustive; they appear to include only the most important strikes of the period.

Following 1886 there is a period of eight and one-half months, to the middle of August, 1887, for which we have no record. Beginning with October, 1887, the files of *The Tailor* are available, and they give a record beginning with the convention which concluded on August 15. From this point down to June 30, 1903, the figures are taken from the biennial reports of the general secretary of the Tailors' Union. For the two months from July 1 to August 31, 1903, the strike benefit has been compiled from the monthly expense accounts in *The Tailor*, but the other items are not supplied. Beginning with September 1, 1903, the reports found in the proceedings of the annual conventions of the American Federation of Labor have been followed. These reports were furnished by the general secretary of



*Supplementary statistics of strikes, 1909-1913*

The above table does not indicate the number of cases in which the unions were able to gain all or a part of their demands by peaceable negotiations, nor does it indicate the causes of strikes. Information of this kind is not at hand except for the four years beginning July 1, 1909, and ending June 30, 1913. For this period the following data are given by Secretary Brais in his 1913 report:<sup>107</sup>

the Tailors' Union to the secretary of the federation, and are slightly more complete than those published by the Tailors in their own journal. There are a few gaps in the table, which are explained by the lack of definite information for the periods in question. In connection with all figures furnished by the secretary of the Tailors, it should be noted that they are not to be accepted as mathematically exact, but are based upon the best data that the secretary was able to obtain from the expense accounts of the national union and from the correspondence with local unions regarding the strikes. It is believed that the figures are fairly reliable for purposes of comparison.

*Definitions and notation.* A disturbance originating in several stores in a given city at about the same date is counted as a single strike. The writer has followed the practice of the officers of the Tailors' Union in this matter. Where necessary the reports of the United States commissioner of labor have been modified to agree with this method of recording strikes.

Each strike has been counted in the period during which it terminated. This is necessary in order to tabulate the results. Strike records are based largely upon benefit paid, and strikes lasting only a few days, so that no benefit was due under the union laws, are not, as a rule, counted at all.

Strikes by which the journeymen secured all or a part of their demands, or by which reductions or other aggressions upon the part of the employers were successfully resisted, are listed as "won or compromised." Strikes where the men went back to work without securing any of their demands, or where they were obliged to accept reductions, are listed as "lost." Members involved in won or compromised strikes are held to have been "benefited." Members involved in lost strikes are held to have been "not benefited." The term "benefited" in this connection refers to the direct result of the strike in question; no attempt is made to estimate the absolute results of strikes, or to balance gains in wages and conditions against losses of time and expenses of union maintenance.

<sup>107</sup> *The Tailor*, August, 1913.

*Results of negotiations with employers*

Number of cases of negotiation or dispute in which the local union was sustained by the General Executive Board <sup>108</sup> .....	287
Number of cases in which the local unions secured gains without strike.....	195
Number of cases involving "victimized" members <sup>109</sup> .....	22
Number of cases resulting in strikes and lockouts.....	70
Total.....	287

*Results of strikes and lockouts*

Won .....	39
Compromised .....	3
Lost .....	26
Pending at close of term.....	2
Total.....	70

*Causes of strikes and lockouts*

<i>Cause</i>	<i>Number</i>
Demand for increased wages.....	30
Union shop question.....	7
Change of system of production.....	7
Discharge of unionists.....	5
Reduction of wages threatened.....	3
Dispute over hours of labor.....	2
Violation of agreement by employers.....	1
Employers sending work out of shop.....	1
Demand for free workshop.....	1
Two or more of above causes combined.....	10
Record of causes incomplete.....	3
Total strikes and lockouts.....	70

No further report of a character similar to the above will be prepared before the 1917 convention, and detailed data for 1913-1917 will therefore hardly be available for the present thesis.

<sup>108</sup> Exclusive of cases in which the union, after applying for support, dropped the matter, and of cases in which the union failed to report the outcome.

<sup>109</sup> These cases were connected with trivial disputes involving the discharge of one or more unionists, where the national union assisted the discharged members financially, but did not authorize any strikes in their behalf.

## 5. CONCLUDING NOTE

The results of collective bargaining in the tailoring trade appear in some respects to be disappointing, as compared with the results secured by unions in other trades. It must be recalled, however, that the Tailors' Union has been confronted with a situation in which very numerous handicaps to trade union success have existed. This union has been obliged to face a declining industry, because of the substitution of cheaper systems of producing clothing. These cheaper systems were so organized as to permit of the employment of large numbers of immigrant and women laborers at comparatively low wages. Moreover, as we have seen, the piece system, coupled with the system of taking work to the tailors' homes, under the seasonal conditions of the trade, has prevented in a very large measure the standardization of hours and working conditions. Under all these circumstances, it is surprising that the Tailors have succeeded as well as they have in avoiding utter demoralization of their trade, and we may well question whether, in the absence of that kind of conservative leadership which has been described, the organization could have existed at all.

## CHAPTER II

### HELPERS AND APPRENTICES

#### 1. DEFINITIONS AND TERMINOLOGY

It has already been pointed out<sup>1</sup> that as a rule, where the journeyman tailor works with help, the help is hired by the journeyman himself, and not by the employer. This system appears to have originated with the taking of work by the journeyman away from the employer's place of business, and has made the problem of assistants in the tailoring trade somewhat different from the same problem in a majority of other trades.<sup>2</sup>

According to the terminology employed in the trade, tailors' assistants are divided into two classes: (1) helpers, (2) apprentices. The following explanation has been given to the writer by an experienced tailor:<sup>3</sup>

The difference between a helper and apprentice is that the former only works at the trade temporarily, while the latter learns the trade with the intention of following it as a journeyman or with the intention of later learning cutting, as tailors call it, which includes drafting of a garment before it is cut. Helpers are for the most part females. A young boy starting to work with a journeyman tailor is sometimes called a helper, but they in nearly every case become apprentices, unless they find the trade too onerous and confining and quit learning.

Tailors who come from the countries of Europe learn the trade before coming here. Those who come here do in most instances work for a journeyman tailor as helper for a season or part of one in order to acquire knowledge of the methods used in this country making garments. They, however, are not considered either helpers or apprentices, although called helpers. They are merely learning the details of making a garment; the fundamentals they have already learned. It is not essential that a newcomer

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<sup>1</sup> *Supra*, p. 29.

<sup>2</sup> For a discussion of other trades in which the assistants are, or have been, employed by the journeymen, cf. J. H. Ashworth, *The Helper and American Trade Unions*, in Johns Hopkins University Studies in Historical and Political Science, Series 33, 1915, pp. 68-77.

<sup>3</sup> A. T. Carlquist, formerly assistant secretary in the general office of the Journeymen Tailors' Union.



does as above related, but it gives him more confidence in himself to hold a job.

To one not familiar with the tailoring trade, there is no way to distinguish between an apprentice and a helper, but the experienced tailor going into a shop could soon tell which was which by noticing the work they were doing.

It will be observed that the term "apprentice" is here used in the sense of a learner, and not in the sense of a person bound to a master workman for a given period of years.

## 2. REGULATION OF HELPERS AND APPRENTICES

The regulation of helpers and apprentices by the organized tailors has been recognized as a matter belonging primarily under the jurisdiction of the local unions. Where the national union has passed regulations on this subject, it has intended to prescribe the limits within which local union control should operate, rather than to remove such control altogether.

Regulations on the subject of helpers and apprentices passed by the national union between 1883 and the present date may be classified according to subject matter as follows:

(1) Eligibility of helpers and apprentices to membership in the union;

(2) Compulsory admission of helpers and apprentices;

(3) Standardization of preparation and skill;

(4) Limitation of the number of helpers and apprentices;

(5) Duties and privileges of apprentices in local unions;

(6) Dues of apprentices to the national union.

The regulations will be discussed under the above heads, and then an effort will be made to interpret these regulations with reference to their purpose and significance in the policy of the union.

(1) Eligibility of helpers and apprentices. The 1884, 1885 and 1887 constitutions of the Tailors' Union contained no express provision either for or against the admission of helpers and apprentices to membership, and during this period the matter was entirely under local union regulation. There is evidence, however, that in some localities there was a prejudice against the admission of women to the union, and this would have operated against the admission of women helpers. For example, in 1888 there was a split in the Houston, Texas, local union over

the question of admission of women.<sup>4</sup> This incident called forth the following comment from the general secretary:<sup>5</sup>

Many tailors will not permit women to belong to their unions. This seems to us to be both unjust and unwise. If they work at the trade they should be in the union and under its control, should pay their dues and fulfill all obligations of full members, and should receive for their work the same pay as men for the same work.

In his report to the 1889 convention<sup>6</sup> the secretary again recommended that women be made eligible to membership. The convention adopted this recommendation and amended the constitution<sup>7</sup> so as to provide specifically for the eligibility of journeymen tailors, helpers and apprentices, whether male or female.<sup>8</sup> Even after the passage of this amendment there seems to have been some discrimination against women members. In his 1891 report<sup>9</sup> the secretary found it necessary to recommend that women be granted the same protection and benefits under the constitution as men, and that in the case of women helpers, when an advance in wages was received by the union, the helpers should be given their full proportion. The 1891 convention did not approve unqualifiedly this recommendation, but adopted the following report of the committee on officers' reports:<sup>10</sup>

*Women members:* Your committee approves of this section with the exception of women helpers. This question to be left at the discretion of the L. U., and we recommend that this convention does not encourage women helpers.

Following 1891 the prejudice against the admission of women helpers does not appear in any official recommendation, and in 1893, as we shall see, the question was definitely disposed of.

(2) Compulsory admission of helpers and apprentices. Admission of helpers and apprentices to membership remained optional with the local unions until 1893, when the convention pro-

<sup>4</sup> *The Tailor*, November, 1888, p. 7, col. 3.

<sup>5</sup> *Ibid.*

<sup>6</sup> *The Tailor*, September, 1889, p. 1.

<sup>7</sup> Up to and including 1889, the convention had power to amend the constitution without a referendum vote. Following 1889 all amendments were submitted to the membership for approval or rejection.

<sup>8</sup> *Constitution*, 1889, Art. VI., Sec. 1.

<sup>9</sup> *The Tailor*, August, 1891, p. 2.

<sup>10</sup> *The Tailor*, August, 1891, p. 3, col. 4, report of committee on officers' reports; p. 4, col. 1, action of convention on 13th and 17th sections.

posed the following amendment, which was approved by referendum vote:<sup>11</sup>

A candidate to be admitted to membership in the J. T. U. of A. by a L. U. must be a journeyman tailor or tailoress, apprentice or helper, and all apprentices or helpers working with members of the J. T. U. of A. 18 years of age or over must become members.

This section remained the same in effect until 1914,<sup>12</sup> when the age limit was removed, making membership of all helpers compulsory.<sup>13</sup> In 1902 the journeyman tailor employing the helper or apprentice was made responsible, under penalty of a fine, for seeing that the assistant joined the union,<sup>14</sup> and this provision, with one or two slight modifications,<sup>15</sup> has remained in force until the present date.

(3) Standardization of preparation and skill. In his report to the 1891 convention, Secretary Lennon indicated that "apprentices should not be allowed to work as journeymen until they are really tailors."<sup>16</sup> No definite action, however, on this point was taken until the meeting of the 1897 committee on laws and audit, when the following amendment was proposed, and passed by the membership:<sup>17</sup>

Apprentices shall be bound either verbally or by writing as the laws of the various states or provinces may provide, for a period of not less than three years, and a clear book shall not be issued by any L. U. to an apprentice after their time has expired unless their work be acceptable to a committee of the L. U. and if found by the committee as efficient a certificate of efficiency shall be issued to the apprentice over a seal of the local signed by the President and Corresponding Secretary.

<sup>11</sup> *Constitution*, 1894, Sec. 26.

<sup>12</sup> *Cf. Constitution*, 1895, Sec. 25; 1896, Sec. 25; 1898, Sec. 32; 1900, Sec. 31; 1902, Sec. 30; 1904, Sec. 34; 1905, Sec. 34; 1908, Sec. 34; 1910, Sec. 33.

<sup>13</sup> *Constitution*, 1914, Sec. 33: "All workers must become members." The proposition as submitted to a general vote in 1913 read: "All helpers must become members," and it was passed in this form. The writer is unable to account for the change in wording, unless it was due to the passage of another amendment at the same time, which read: "All help working at the trade for contractors or sub-bosses must become members of the union." *Cf. The Tailor*, September, 1913, p. 6, Proposition No. 12; p. 5, Proposition No. 9; vote, November, 1913, supplement.

<sup>14</sup> *Constitution*, 1902, Sec. 22.

<sup>15</sup> *Constitution*, 1910, Sec. 23; 1914, Sec. 12.

<sup>16</sup> *The Tailor*, August, 1891, p. 2.

<sup>17</sup> *Constitution*, 1898, Sec. 23.

This amendment remained in force until 1903, when it was stricken out.<sup>18</sup> In commenting upon the proposal to strike out, the secretary said: "There are no conditions in a legal sense regarding apprentices that warrant the continuance of any such action."<sup>19</sup>

(4) Limitation of the number of helpers and apprentices. Prior to 1898 the regulation of the number of helpers and apprentices was left entirely to the local unions. There is no information at hand to indicate to what extent this regulation had gone before this date. An official report in 1889 appears to indicate that in the best class of stores at any rate some effort had been made to limit the number of helpers to one to each journeyman, or even to prohibit helpers altogether.<sup>20</sup> In his 1891 report the general secretary said, referring to the subject of apprentices and helpers:<sup>21</sup>

With home work so largely prevalent among tailors, but little control can be had by our union on either subject, but where the unions have the rule in force that all work shall be made on the employers' premises, not more than one helper or apprentice should be allowed to each journeyman.

And in his 1893 report:<sup>22</sup>

The limitation of the number of helpers and apprentices should receive your consideration. The present system in some cities is really nothing but the sweating system and should be abolished. Whatever the limit that may be made by this convention, it should be binding on every union, and tailors that wish to be sweaters should get outside the J. T. U. of A.

Neither the 1891 nor the 1893 convention saw fit to enact any legislation on this subject. There was no convention or legisla-

<sup>18</sup> *The Tailor*, September, 1903, p. 2, Proposition No. 5; vote, November, 1903, supplement.

<sup>19</sup> *The Tailor*, September, 1903, p. 5, comment on Proposition No. 5. Cf. the following from Lindley D. Clark, *The Law of the Employment of Labor*, p. 23:

"Practically all the states have laws relating to apprentices and the regulation and enforcement of contracts with them. These laws generally prescribe the term of indenture, the duties of the master as to training, education, and the payment of the stipulated amount on the expiration of the term. . . . These laws are practically obsolete at the present time, contracts between employers and unskilled men or boys learning trades being for the most part governed by the rules of law generally applicable to labor contracts."

<sup>20</sup> *The Tailor*, September, 1889, p. 1, report on "Conditions in our trade."

<sup>21</sup> *The Tailor*, August, 1891, p. 2.

<sup>22</sup> *The Tailor*, August, 1893, p. 2.



tive committee meeting between 1893 and 1897, but in 1897 the committee on laws and audit proposed the following amendment, which was approved on referendum vote:<sup>23</sup>

Each local union of the J. T. U. of A. shall have power to forbid the employment of any helpers in their respective jurisdictions, but no L. U. shall have power to allow any member to employ more than one helper or one apprentice.

Subsequent legislation by the Tailors' Union on the subject of limiting the number of helpers and apprentices falls into two classes: (a) amendments providing for relaxation of the "one helper rule," on account of the difficulty of enforcing the same in certain localities, resulting finally in the return to the former system of regulation by the local unions; (b) positive legislation designed to prevent, rather than to promote, the limitation by local unions of helpers in localities where such limitation was regarded by the national officials as a handicap to union progress.

The first amendment in the direction of relaxing the one helper limit was passed in 1903, and provided as follows:<sup>24</sup>

In cities where organizing work is being carried on by the local union or by the general organizers, and conditions existing in the trade in such cities make it impossible to thoroughly organize the craft with the one helper limit, with the consent of the G. E. B. Section 23 can be suspended in such city until conditions and prices can be so improved as to warrant the enforcement of the one helper limit, and all persons working at the trade in such case shall be eligible to membership.

This section was repealed in 1909, and the following substituted:<sup>25</sup>

In cities where conditions regarding helpers and apprentices as fixed by the existing L. U. prevent a thorough organization of the trade, the G. E. B. shall have power, if found necessary after a careful investigation, to issue a charter to another L. U.

At the same time the section forbidding local unions to allow more than one helper or one apprentice to each journeyman was repealed, and the matter was left specifically to the control of the local unions.<sup>26</sup> Finally, provision was made for the admission of "contractors or sub-bosses" to membership in the national union

<sup>23</sup> *Constitution*, 1898, Sec. 22.

<sup>24</sup> *Constitution*, 1904, Sec. 24.

<sup>25</sup> *Constitution*, 1910, Sec. 24.

<sup>26</sup> *The Tailor*, August, 1909, p. 40, Proposition No. 3; *Constitution*, 1910, Sec. 23.

as passive members;<sup>27</sup> contractors or sub-bosses being defined as tailors employing more than one helper.<sup>28</sup> This amendment made it possible for tailors employing more than one helper to secure membership in the national union, even though debarred from membership in the local; thus marking the last step in the reaction from the original limitations. No further changes of an important character were made, except to substitute the word "finishers" for "apprentices" in the section governing helpers and apprentices, making this section read: "helpers and finishers," instead of "helpers and apprentices;" the intention of this change being probably to include apprentices under "helpers," and to make sure that persons employed as finishers would be brought into the union as well as regular helpers.<sup>29</sup>

The attempt to regulate the number of helpers and apprentices in shops employing the weekly system, where helpers and apprentices are under the control of the employer, took a course similar to that followed in the case of pieceworkers' helpers. An amendment was passed in 1905 providing that "no helpers shall be employed by the men working under the weekly system, and under no consideration shall more than one helper or apprentice be allowed to each man."<sup>30</sup> but this amendment was repealed in 1907.<sup>31</sup> At present the union exercises only such control over assistants in weekly shops as may be secured locally through agreement with the employer.<sup>32</sup>

(5) Duties and privileges of apprentices in local unions. In 1901 an amendment was passed providing that "no regularly bound apprentice shall have a vote upon any administrative question before the local union, nor shall they be required to pay

<sup>27</sup> Passive members are allowed to remain in benefit in the national union by paying the national dues and levies, but are debarred from attending local meetings unless requested by the local union, and are excused from payment of local dues. *Constitution*, 1914, Sec. 55.

<sup>28</sup> *Constitution*, 1910, Sec. 56.

<sup>29</sup> *Constitution*, 1914, Sec. 12.

<sup>30</sup> *Constitution*, 1905, Sec. 77.

<sup>31</sup> *The Tailor*, September, 1907, p. 7, Proposition No. 7; vote, November 1907, supplement.

<sup>32</sup> For example, in union shops in Seattle employing the weekly system the rule is one apprentice to every twelve employees. *The Tailor*, April 10, 1917, p. 3.

local dues."<sup>33</sup> This was replaced in 1904 by the following:<sup>34</sup>

It shall be optional with each local union to excuse apprentices and helpers from payment of all or a part of the local dues. Apprentices or helpers shall not have the right to vote on this question.

Changes since 1904 have eliminated this provision, but it is probably held to be included in the following provision of the present law: "All local unions of the J. T. U. of A. shall have the power to regulate the employment of helpers and finishers in their respective jurisdictions."<sup>35</sup>

(6) Dues of helpers and apprentices to the national union. In 1913 a rule was enacted permitting helpers and apprentices employed at a wage of less than \$12.00 per week to pay 40 cents a month dues to the national union, instead of the regular dues of 65 cents a month, provided they would waive the sick and death benefits.<sup>36</sup> This amendment was significant mainly as an incident to the effort to establish an industrial union, and will be discussed in that connection.<sup>37</sup>

### 3. INTERPRETATION OF UNION REGULATIONS

In endeavoring to interpret the regulations of the Tailors' Union on the subject of helpers and apprentices, it is necessary, first, to indicate the purposes served, or intended to be served, by the regulations as first passed; and second, to account for the retrograde movement, by which practically all regulation on the part of the national union was abandoned.

The purposes of the regulations passed by the national union seem to have been principally the following:

(1) To standardize preparation for the tailoring trade, and prevent imperfectly trained workers from posing as skilled journeymen;

(2) To avoid a surplus of journeymen tailors by limiting the number of learners;

(3) To prevent a reduction of the demand for skilled men on account of their work being done by helpers; or, what amounts to the same thing economically, to prevent journeymen taking

<sup>33</sup> *Constitution*, 1902, Sec. 23.

<sup>34</sup> *Constitution*, 1904, Sec. 14.

<sup>35</sup> *Constitution*, 1914, Sec. 12.

<sup>36</sup> *Constitution*, 1914, Sec. 25.

<sup>37</sup> *Cf. infra*, pp. 103-104.

advantage of one another by employing a number of helpers and getting more than their "share" of the work;

(4) To oblige helpers and apprentices to assume union obligations, since indirectly they profited by union conditions;

(5) To educate helpers and apprentices in union principles, and prevent their acting against the union in strikes.

Since some of the regulations had more than one purpose, and some of the purposes named were served by more than one regulation, it would be cumbersome to relate the regulations to their purposes in complete detail. We shall endeavor to indicate only the more important connections, leaving the reader to supply the others for himself:

(1) To standardize preparation for the tailoring trade. It has already been noted that an effort was made to accomplish this object by coöperation with state laws designed to fit the old systems of indentures and fixed terms of apprenticeship, and that this effort was abandoned on account of the obsolescence of the old legal system. At the present time there is no standardization except that which is imposed by the merchant tailor or cutter,<sup>38</sup> and as a result standards of skill in the tailoring trade have been very considerably demoralized.

(2) To avoid a surplus of journeymen tailors by limiting the number of learners. In this connection the rule should be recalled which was in force for a time, whereby only one apprentice or one helper was allowed to each journeyman. While there were other reasons for the limitation to one helper, which we shall consider shortly, the fact that the helper was a potential apprentice made the limitation of helpers as well as the limitation of apprentices desirable for the purpose that we are now considering. However, in the writer's opinion, the rules of the union have been far less potent than other causes in bringing about the limitation of the number of apprentices.<sup>39</sup> These

<sup>38</sup> "There is no system of examination of apprentices in tailoring, except that one must be competent to make a garment in accord with the ideas of the cutter or the boss, either of whom does the examining after the job is finished. That is examination enough. No two cutters have the same ideas as to details of the making of a job." A. T. Carlquist, correspondence, November 5, 1916.

<sup>39</sup> As far as we can discover, the number of apprentices actually learning the trade with union men has been published on only two dates, August,



other causes will be considered in the last section of this chapter, in connection with the present shortage of skilled tailors.

(3) To prevent a reduction of the demand for skilled men on account of their work being done by helpers; to prevent journeymen taking advantage of one another by employing a number of helpers and getting more than their "share" of the work.

These two objects are discussed together, for the reason that they are not economically distinct, and together they constituted the principal motive for limitation of the number of helpers. The literature of the Tailors' Union contains many interesting accounts of the conditions which led to the attempt at this kind of limitation. The following extract indicates the situation in certain large cities in 1891, as indicated by reports of union organizers:<sup>40</sup>

As we were going from house to house to see the tailors for the purpose of getting them to join the union, we met some that were more than willing to join, but, they said, we have not done anything for six weeks, so you see that it is impossible for us to join at the present time.

Others we saw at different times that worked for the same firms, who were busy when we called on them; yes, they had three or four coats all the time, and some of them had their wives, sisters-in-law, and three helpers, helping them.

Now, if the principles of union were enforced in this case, this would not be, for they would all receive work.

It also happens that during the dull season a suit of clothes must be done on short notice, so the one that has the helpers will get the job. This could also be done away with if we had the back-shops, for then two or three good men would have a chance to work a day or two.

In the city of Cincinnati, there is one vest maker, who has eight helpers, who make one hundred and ten vests a week, and in Cleveland there is a pants maker, who with thirteen helpers, working for seven different firms,

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1903, and January, 1912. On the first date, Secretary Lennon, basing his statement on the returns from a questionnaire sent out to local unions, reported that there were approximately 625 apprentices learning the trade with union men within the jurisdiction of the Tailors' Union. The total membership of the union at this date was about 14,500. This indicated an average of about one apprentice to every 23 members. In January, 1912, returns from a questionnaire sent out by the writer indicated that with 5,323 members reporting (about 40 per cent of the entire membership at this date), there were 180 apprentices, or about one to every thirty members. Cf. *The Tailor*, August, 1903, p. 5; Stowell, *op. cit.*, pp. 152-155, 158.

<sup>40</sup> *The Tailor*, July, 1891, p. 5, col. 4, article on "How to organize the tailors," by M. Bantz, organizer.

turns out one hundred and forty-five to fifty pair of pants a week. Now if this work were done by practical tailors, it would give in the former case employment to sixteen, and in the latter to twenty-six men.

The exploitation of female labor at about the same date is indicated by the following:<sup>41</sup>

The employment of female help is not necessarily an evil if limited to one help, but the selfishness and greed of many has led to its abuse, and it is a well-known fact, more particularly in pants making, one man runs a little factory by employing as many as four and six girls. The man who employs them is making money out of them.

Finally, we quote an article from a Chicago tailor, indicating conditions in that city in 1892:<sup>42</sup>

Custom tailoring is manipulated at present in a way that can safely be classed in the sweating system. In Chicago there are a great number of even union tailors who employ helpers in their private homes, or in places engaged for the purpose of manufacturing custom tailoring garments, and the old custom of applying individual artistic labor in the production of fine tailoring is being more and more pushed to the wall, and consequently made unprofitable to those engaged therein, by the other method of working in gangs, with trimmers, machine operators, pressers and finishers.

There is in Chicago a manifest tendency towards this, especially so in the making of trousers and vests. From personal observation I know that only about five per cent of trousers makers in Chicago are actually engaged in the making to completion, in every detail of the work, the above mentioned garment. This is even more so in the vest making line, I can safely say, not having found in ten years as many as twelve vest makers who individually completed their job; in passing, I will remark that this holds only good where the question is about men. Women vest makers do, as a rule, work single-handed; only a few of them have I seen to employ helpers on any large scale worth mentioning. Coat making in fine tailoring is practised in the same way, if not in so great proportion; as in this line, it appears, a man is guaranteed better and steadier wages, even if he is working single handed, than in the vest and trousers department of the trade. Notwithstanding this a great number of our union coatmakers do employ helpers; even two helpers are found working for union men in direct opposition to our local constitution, that prohibits this same; and, judging from appearances, it is safe to predict that time will come in the near future when it will be possible to manufacture fine coats on a large scale and still give satisfaction to the trade in regard to superior workmanship, just as much as when you today give the making of a dress coat into the hands of a journeyman tailor and rely on his individual accomplishments as an artist in finishing the garment.

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<sup>41</sup> *The Tailor*, September, 1891, p. 1, col. 2. Article on "The eight hour question as applied to tailoring," by Alex S. Drummond.

<sup>42</sup> *The Tailor*, May, 1892, p. 3, col. 1, article by P. Ewald Jensen.

These extracts, selected at about the date when agitation by the officials of the national union on the helper question was becoming active,<sup>43</sup> tell their own story with reference to the conditions which it was hoped to remedy. The regulations by which this object was to be accomplished have already been discussed. The backward movement, by which the attempt to limit helpers by regulations on the part of the national union was abandoned, was due to reasons which again may best be indicated by the union writers themselves. As early as 1889 Secretary Lennon recognized the difficulty of enforcing any limitation of helpers in what was known as the cheap custom trade.<sup>44</sup> When, however, the Garment Workers' Union was organized, and this union began to organize cheap custom tailoring, as well as the ready-made clothing trade, Mr. Lennon appears to have resumed the effort for limitation of helpers in his own union by national regulation, believing no doubt that it could be done in the better class of trade, to which, more and more, the Journeymen Tailors' Union was confining itself.<sup>45</sup>

It will be recalled that the one helper limit by enactment of the national union was in force without qualification from 1898 to 1903. The following letter, which was addressed to the committee on laws and audit in 1903 by Organizer Carlquist, appears to have had an influence in the direction of relaxing the one helper rule:<sup>46</sup>

Owing to certain peculiar features which I have encountered in connection with our craft in the cities of New England which I have visited, notably so Boston and Providence, I take liberty of calling your attention particularly to the feature of helpers. My experience in the city of Boston

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<sup>43</sup> Cf. *supra*, pp. 69-70.

<sup>44</sup> "My attention has been most forcibly called to the fact of the constantly increasing amount of cheap custom tailoring that is being done in every city of the country, and to the very alarming fact in connection therewith, that such work is not being made by our members, but by persons who are usually not tailors at all. . . . While in the fine stores of the country it is entirely practical to limit our members to one helper, or even none at all, in the making of this cheap custom work it appears to me that such limitation is suicidal to the journeyman tailor, and deprives him of work that should be made by him, but is now made by persons who have really no skill as tailors." *The Tailor*, September, 1889, p. 1, col. 4.

<sup>45</sup> The question of trade union jurisdiction over different branches of the clothing trade will be discussed more fully in Ch. III.

<sup>46</sup> *The Tailor*, August, 1903, p. 8.

teaches, yes, convinces me, that in order to more thoroughly organize our craft in places where the jöurs employ more than one helper it will be necessary to take in such jöurs as well as their helpers. . . . The question of more than one helper exists in many places to a greater or less extent. The question then arises: Is the J. T. U. of A. strong and influential enough to do away with this system of more than one helper? We must confess our weakness that we cannot. That system exists and is going to exist whether we as an organization refuse to take such people into our union or not. Certain it is, however, that were the laws on that subject amended so that we could admit them to membership, I am positive that that evil, as we jöurs look upon it, could be better regulated. . . . For us to frown upon that portion of the jour tailors who employ more than one helper is not going to remedy the evil, neither will it do us any good to call them "sweaters." They will keep on "sweating" in spite of us, and so long as they are outside of our organization they are a worse menace to us than if we had them in our organization.

The committee approved in essence the ideas set forth in the above letter,<sup>47</sup> and proposed the amendment already noted, whereby the one helper rule might be suspended at the discretion of the General Executive Board.<sup>48</sup> The further relaxation of the one helper rule and its final elimination appear to have been dictated by similar considerations.<sup>49</sup>

It must not be supposed that the removal of restrictions on the part of the national union put a stop to the regulation of helpers and apprentices by the local unions. An inquiry in 1911 indicated that of sixty-seven unions reporting: "Six unions stated that no helpers were employed by their members; twenty-five unions had no rule on the subject; ten unions had a rule that no helpers should be employed; twenty-three unions permitted one helper only to each journeyman; two unions permitted not more than two helpers to each journeyman; one union permitted 'one helper to each shop.'" <sup>50</sup>

(4) To oblige helpers and apprentices to assume union obligations, since indirectly they profit by union conditions.

(5) To educate helpers and apprentices in union principles, and prevent their acting against the union in strikes.

These two purposes gave the principal motives for admitting helpers and apprentices to membership, and later insisting upon

<sup>47</sup> *The Tailor*, August, 1903, p. 16, col. 2.

<sup>48</sup> *Supra*, p. 70.

<sup>49</sup> *The Tailor*, September, 1909, p. 1, comment on Proposition No. 3.

<sup>50</sup> Stowell, *op. cit.*, p. 158.



their admission, under the rules already indicated.<sup>51</sup> The placing of the age limit at eighteen years appears to have been based upon three ideas: (1) that the helper who has reached this age is sufficiently mature to undertake union responsibilities; (2) that women helpers of this age have reached their legal majority; (3) that by this age apprentices should have learned the elements of the trade, and both for their own benefit and for the protection of the union should be under union control.

The regulations concerning the local dues and privileges of apprentices and helpers<sup>52</sup> are passed over as comparatively insignificant in the policy of the national union.

#### 4 PRESENT CONDITIONS WITH REFERENCE TO THE SUPPLY OF SKILLED TAILORS

It is difficult to ascertain the facts with reference to the present supply of tailors. It seems to be admitted both by employers and employees that there is a real scarcity of skilled journeymen capable of doing the highest grade of work. From the literature of employers it would be inferred that there is a scarcity of tailors in general, while in the literature of the Tailors' Union frequent reference is made to a condition where there are "two tailors for every job." The confusion on this subject arises no doubt in part from the different viewpoints of the several observers, some having an eye to the fact that in the rush seasons it would frequently be convenient for the boss to have a larger force of journeymen, while others are thinking of the condition in the slack seasons, when there are not only two, but several, journeymen to each job. A reasonable conclusion, in view of all the information in the writer's possession, appears to be that there is an actual scarcity of skilled tailors of the highest competency and skill, although there are a considerable number of mediocre workers parading as tailors, including many who have learned the trade somewhat imperfectly abroad. Accepting this conclusion, we proceed to consider the causes of the scarcity of skilled workers.

Here again we find differences of opinion and a considerable variety of alleged causes advanced. In "A Series of Papers on

<sup>51</sup> Cf. *supra*, pp. 66-68.

<sup>52</sup> Cf. *supra*, p. 72.

the Journeyman Tailor Problem," published by *The American Gentleman*, a fashion journal,<sup>53</sup> the following causes are alleged as contributing to the scarcity of skilled journeymen tailors:

The best journeymen leave the trade to become cutters or merchant tailors, or to accept good positions with ready-made clothing factories.

The system of specialized or "sectional" work on the cheaper class of tailoring does not require highly skilled workers.

Immigrant tailors now come from less competent and intelligent races than formerly.

The tailoring trade is not recognized as an art, as it should be, and therefore is not attractive to possible learners.

The old apprenticeship system has disappeared, largely on account of the invention of the sewing machine.

The tailoring trade has a bad reputation abroad, especially in the British Isles; the trade is taught mainly in charitable institutions, and is considered to be "no good except for cripples and women."

The Journeymen Tailors' Union of America has placed obstacles in the way of learners acquiring the tailoring trade.

Journeymen tailors employed on piece work have not time to teach apprentices.

Apprentices rise from the position of helpers, and are imperfectly trained; journeymen do not teach them the whole trade for fear of losing a good helper.

There is no chance for a boy to learn the tailoring trade in school vacations; journeymen will not take boys for three months only.

Apprentices are taught mainly by journeymen employed in the cheaper trade; journeymen in the fine trade will not take the trouble to instruct apprentices; apprentices instructed in the cheaper trade cannot fill positions in first-class shops.

The merchant tailor who does not have his work made in his own shop has nobody with whom to place apprentices.

<sup>53</sup> This series consists of twelve articles reprinted from the November and December, 1910, and February, 1911, numbers of the journal. These articles were brought out by a prize essay contest. The articles are not signed, but from their tenor it is evident that the writers included journeymen tailors as well as employers and cutters.

Young men are prejudiced against the tailoring trade, as compared with other trades, on account of:

- (a) Long hours and irregular seasons;
- (b) The long period of apprenticeship (two to five years);
- (c) The low wages of apprentices;
- (d) The low wages of journeymen;
- (e) Lack of clean and sanitary shops;
- (f) Failure of employers to furnish shops at all in some localities, necessitating home work or payment of shop rent;
- (g) Employment of women; boys do not want to take up "women's work;"
- (h) Disadvantages of the piecework system;
- (i) Second-class workers can make as much as first-class workers by taking less pains and working faster.

The remedies suggested in the same series of papers are equally diverse:

Establish the sectional system of production. Let several merchant tailors unite to furnish a large workshop.

Establish trade schools, either under public or private control. Publish text-books on the tailoring trade.

Admit apprentices to instruction in first-class shops at fair wages.

Employ journeymen by the week.

Employ journeymen by the year, like a cutter; regularize hours.

Furnish free shops for the journeymen. Improve sanitation and other conditions in all shops.

Give good workmen recognition for their skill; pay fair wages.

Improve the personal treatment of journeymen by employers and cutters; do not ask journeymen to make alterations without extra pay on account of cutters' mistakes.

Let cutters' associations and journeymen tailors' unions hold joint meetings and discuss the improvement of the trade.

If skilled journeymen cannot be obtained, employ women to do all of the work except the heavy pressing.

As would be expected, the journeymen tailors allege in explanation of the scarcity of apprentices those causes connected with unfavorable conditions in the trade, and are inclined to favor those remedies which have to do with the improvement of conditions. The employers, while by no means indifferent to the necessity for improved conditions, still adhere to the theory that apprenticeship is being restricted by the rules of the tailors' un-

ions and by the tacit disinclination of journeymen to teach apprentices. The favorite remedy of employers for the situation is the establishment of trade schools. The journeymen deny strenuously that apprenticeship is being held back by the rules of their unions, and point out that for reasons altogether independent of their rules the number of apprentices is seldom up to the number allowed by the unions. On the subject of the education of apprentices, Secretary Lennon was accustomed to make a distinction between "trade schools" and "industrial education." Commenting upon a plan for the establishment of trade schools by an association of merchant tailors he said:<sup>54</sup>

We feel sure that the merchant tailors must understand the distinction between industrial education and trade schools. Industrial education means the development of high class workmen. Trade schools mean, and have never meant anything else, the turning out of a lot of cheap skates industrially that could accomplish nothing as workmen and were only a menace to the business. In Munich where industrial education has reached its highest development and its greatest degree of efficiency, the trade schools - if they may be called that at all - are merely an adjunct to the general education of the workman or apprentice. Trade schools in the tailoring business have already been tried in this country. And in every case they have been failures absolutely and totally; didn't turn out mechanics, and in the next place, they couldn't get material in the shape of boys from which to make mechanics, or girls either. And they can't obtain them now, and these merchant tailors, if they had studied industrial conditions even superficially, must know that this statement is absolutely true. Conditions in our trade are the thing that prevents the boys and girls from entering it. And until those conditions are changed there will be no influx of boys and girls into the custom tailoring industry.

We may conclude that for a time the tailoring trade will be obliged to rely very largely upon the immigration of foreign-trained tailors for its supply of workmen, but that eventually a system of vocational education will be perfected which will create real mechanics. In the meanwhile, the number of skilled tailors of the old type required will become less and less, as the new systems of subdividing the work increase, and it is probable that in the long run the employment of skilled hand-workers, capable of making an entire garment, will cease, except in the very finest stores.

<sup>54</sup> *The Tailor*, January, 1910, p. 20. For other articles on the question of apprenticeship, see *The Tailor*, April, 1910, pp. 4, 16; May, 1910, p. 17; January 23, 1917, p. 3.



### CHAPTER III

#### PROBLEMS OF JURISDICTION AND THE MOVEMENT TOWARD INDUSTRIAL UNIONISM

In a previous monograph <sup>1</sup> an account was given of the rise of the tailoring trade in America, and a brief résumé of this account is necessary at this point. For the first two centuries following colonization, the tailoring industry in this country was occupied chiefly with custom work for wealthy patrons, together with a small amount of ready-made clothing, hand-sewed, for Indians, negroes and sailors. The invention of the sewing machine in 1846 marked a great change. Following this date the ready-made clothing industry increased rapidly, and soon became a formidable competitor to the older system of custom work, or work made to the order and measure of each individual customer. To meet this competition merchants and employees in the custom trade were obliged to cheapen production by having a part of the work on custom suits done by machine. As a result the machines were introduced into shops and homes, and the skilled tailors began to employ more extensively members of their own families or outside helpers, usually women, to do the finishing work.

The past thirty years has witnessed a very great improvement in the quality of ready-made clothing, and the old-style merchant tailoring business has suffered a corresponding decline. This result has been accelerated by the rise of new systems of production, whereby the methods of the ready-made clothing industry have been applied to the manufacture of clothing to measure. Custom tailoring done in factories is generally known as "special order" trade, and has entered into competition principally with

<sup>1</sup> Stowell, *Studies in Trade Unionism in the Custom Tailoring Trade*, pp. 16-32; 42-75.

the cheaper grade of custom tailoring done on the old system.<sup>2</sup> However, in recent years new methods have grown up for making also the finer grades of clothing, on what is known as a "sectional" or "team" system, whereby the work on a garment will be systematized and passed through several hands, employing only as much skilled help as is absolutely necessary.<sup>3</sup> The result is that we have today a very great variety in the methods and quality of custom tailoring, ranging from the cheapest machine work to the most artistic and expensive suit turned out by the fine stores in the cities.

The early societies mentioned in the historical sketch in the Introduction were composed of custom tailors, hand workers, together with their apprentices and helpers. The jurisdictional questions which are to engage our attention in this chapter had not yet arisen. While the ready-made clothing industry existed during the period from 1725<sup>4</sup> to 1880, movements toward the organization of the workers in this industry were insignificant, and there was little opportunity for clash of jurisdiction with the custom branch. In fact, it was not until the period of organization of national unions that the jurisdiction question became prominent.

In 1883, when the present national union of journeymen tailors was founded, the workers on ready-made clothing were known as "shop tailors." At this time there was no national union composed exclusively of shop tailors, although some local societies were forming. There was a national organization known as the "Tailors' Progressive Union of America,"<sup>5</sup> which contained both custom tailors and shop tailors, the shop tailors, however, being in the majority. The Knights of Labor also contained some assemblies of tailors, including both custom tailors and shop tailors.<sup>6</sup> Finally, one or two unions of shop tailors became affiliated with the Journeymen Tailors' organization. It

<sup>2</sup> Even cheap custom tailoring done by the piece on a sub-contracting or "sweating" system has found it difficult to compete with the factory work.

<sup>3</sup> Cf. *supra*, p. 51.

<sup>4</sup> Miss Sumner sets 1725 as the date of the beginning of the ready-made clothing industry in America. Stowell, *op. cit.*, p. 20, and note 36.

<sup>5</sup> Cf. Stowell, *op. cit.*, p. 66, and note 112.

<sup>6</sup> *Ibid.*, pp. 67-68, and note 115.

should be understood that at this time (1883-1891) the shop tailoring or ready-made clothing industry was not sharply separated from the custom tailoring industry, either with reference to the places of business or with reference to the people who carried on these industries. It was a fact deplored by Secretary Lennon of the custom tailors that the members of his craft were contributing to the destruction of their own occupation by working on ready-made clothing in the dull seasons.<sup>7</sup> Mr. Lennon as editor of the custom tailors' journal expressed himself repeatedly in favor of a single organization to include both custom tailors and shop tailors.<sup>8</sup> The official organ of the Progressive Union was also in favor of a single organization, which would involve an amalgamation of the Progressive Union with the Journeymen Tailors' Union.<sup>9</sup> The arguments advanced in favor of amalgamation were as follows: (1) Organizations should concentrate power as much as possible, instead of wasting it fighting each other; (2) amalgamation would have an "animating effect" upon the individual tailors and local unions that had not yet joined the nationals; "the usual excuse, that they do not know what organization to join, would be impossible;" (3) the consolidated organization would have sufficient power to bring in those assemblies affiliated with the Knights of Labor; (4) the bosses would respect the united union more than the divided ones; (5) the expense of administration would be less; (6) the influence of the union label could be extended.<sup>10</sup>

In favor of the general proposition to bring shop tailors into

<sup>7</sup> "I am well aware of the fact that there are now in New York City several large ready-made firms who pride themselves on the fine quality of their work; who hold back for the dull season with the custom tailors very much of their best trade, knowing full well that they can get plenty of good tailors to make it. To the credit of many custom tailors it can be said that they have at all times and under all circumstances refused to be the tools to cut their own throats, and what a pity that it could not be said of all." *The Tailor*, September, 1889, p. 7.

<sup>8</sup> Editorials in *The Tailor*, January, 1888, p. 4; May, 1888, p. 7; June, 1888, p. 4; December, 1888, p. 5, on "Unity Among the Tailors."

<sup>9</sup> *The Tailor*, December, 1888, p. 5, article "Regarding the Amalgamation of the Tailors' Unions," reprinted from *Progress*, official organ of the Tailors' Progressive Union of America.

<sup>10</sup> The Progressive Union had adopted a label, which was recognized by the American Federation of Labor in 1887 for use on ready-made clothing, but the Journeymen Tailors' Union did not adopt a label until about 1891.

the custom tailors' union, it was pointed out that shop tailors were doing the work of custom tailors during strikes, and that it would be necessary to secure control over the shop tailors before anything could be accomplished in the industry at large.<sup>11</sup>

There were some obstacles in the way of amalgamating the Progressive Union and the Journeymen Tailors' Union, as a majority of the "Progressives" were outspoken Socialists, while the majority of the Journeymen Tailors were more conservative along political lines. The "Progressives" claimed that the skilled journeymen tailors were opposed to progressive ideas on account of their better economic situation, but expressed the hope that "even these will awaken from their sleep."<sup>12</sup>

<sup>11</sup> An excellent description of the situation in the clothing trade is afforded by the following passage, describing the experience of a committee of the custom tailors' union in attempting to prevent a reduction of wages in first-class houses:

"The main argument of the bosses was that the second-class houses were of too great a competition to them, as they sold the same goods at lower prices. We were asked to either accept the reduction or to charge the second-class houses higher rates. We parted, giving the assurance to try to enforce the latter proposition. The second-class houses acknowledged selling goods of equal quality as did the first-class houses, but stated further that, if they had to pay the same prices, their customers would patronize third-class houses and consequently neither they themselves nor we would draw any benefit from such action. We were determined to fulfill our mission, and, in order to place the lever on the right spot, we called on the third-class houses. They also saw the disagreeableness of the present state of affairs, but could under no consideration pay any higher prices, for, the gentlemen explained, if we have to pay more, we will also have to charge more, and the effect will be that our customers—to a great extent laborers—will buy ready-made goods. The extremely low prices for ready-made clothing forces upon them a competition which they can meet only with the greatest carefulness, or else they will have to close up shop. . . . It must be accredited to our stupidity that we are, by a raise of wages, about to saw off the branch upon which we are sitting, for we are driving off our customers to a sphere where we can exert no influence nor have any control over them . . . what we can and must do is to bring all the workers of our trade under our control. This is the point where the lever must be applied if we expect to see any results at all; every other exertion is more or less of a subordinate nature." From "Reform Measures—III," by an unknown writer signed "F.F."; possibly the secretary of the Syracuse, N. Y., union, who had the same initials. *The Tailor*, June, 1889, p. 1.

<sup>12</sup> *The Tailor*, December, 1888, p. 5, article from *Progress*. Cf. note 9, p. 84.



Desultory efforts to bring all of the tailors into one organization continued during the years from 1888 to 1891. In 1891 a conference of shop tailors met in New York City, and expressed a desire to join the Journeymen Tailors' Union. When, however, this action was presented to the Executive Board of the Journeymen Tailors, they refused to admit the shop tailors or ready-made clothing workers, the principal reasons apparently being a feeling of trade caste and a fear that in some way the decline of merchant tailoring would be hastened if the skilled workers allowed the cheaper workers to join their union.<sup>13</sup> As a result, in 1891, the ready-made clothing workers started a union of their own, under the name of "The United Garment Workers of America," and received a charter from the American Federation of Labor.<sup>14</sup> Later, in 1900, the workers on ready-made clothing for women organized a separate national union, known as the "International Ladies' Garment Workers' Union." At this stage, therefore, there were three organizations in the tailoring industry which were recognized by the American Federation of Labor: the Journeymen Tailors' Union of America, controlling custom work; the United Garment Workers of America, controlling principally work on men's ready-made clothing; and the International Ladies' Garment Workers' Union, controlling work on women's ready-made clothing.

The first clash of jurisdiction between the Journeymen Tailors' Union and the United Garment Workers grew out of the system, to which attention has already been called, of manufacturing custom-made clothing in factories. While the greatest development of this system has been comparatively recent, it was beginning to command attention early in the history of the present national union.<sup>15</sup> In 1896 an issue was raised between

<sup>13</sup> It has been necessary to rely upon former Secretary Lennon for the details of this conference, as it was not reported in the minutes of the Executive Board.

<sup>14</sup> The Tailors' Progressive Union does not appear to have been important after 1889. Cf. Stowell, *op. cit.*, p. 66, note 112.

<sup>15</sup> "Industrial changes are gradually coming into our trade; division and subdivision of labor is steadily advancing in the making of clothes; the tailors must take advantage of the new conditions for their own benefit, or the new methods will leave them in the rear idly waiting, while people who are not tailors will, under the new system, make the trade. We must reason

the two national unions concerned by an attempt on the part of a firm named the M. M. Jacobs Company of Chicago to use the Garment Workers' label on work made to measure under a factory system.<sup>16</sup> There appeared to be a lack of agreement among the custom tailors themselves as to which union should control this class of firms. As early as 1892 Secretary Lennon of the Journeymen Tailors' Union had expressed himself favorable to organizing the factory work or "cheap trade," as it was called,<sup>17</sup> and a little later had indicated his belief that the first-class merchant tailors and their employees were making a mistake by opposing the organization of the cheaper firms.<sup>18</sup> The controversy over the Jacobs firm in 1896 made it evident that some kind of an agreement would have to be reached between the Garment Workers and the Tailors with reference to these firms. Accordingly, the Tailors' delegates to the 1896 convention of the American Federation of Labor were instructed by their Executive Board to ask for the adoption of the following resolutions:

WHEREAS, The jurisdiction of the J. T. U. of A. and the United Garment Workers of America has been, and is, by a considerable part of organized

together as to what can, and what should be done. Indifference is suicidal." *The Tailor*, October, 1891, p. 4, editorial.

<sup>16</sup> This firm was established by some union garment workers who had been blacklisted by the employers following a strike in Chicago, and who had gone into business for themselves. *The Tailor*, July, 1896, p. 8.

<sup>17</sup> "The cheap trade is each day making greater inroads into the fine merchant tailoring, and for that reason the tailors employed in the cheap trade must be organized and lifted up, or they will surely pull down the fine tailors." *The Tailor*, February, 1892, editorial.

<sup>18</sup> "In several cities our unions are having some difficulty in handling the very cheap trades, as many of our members and many merchant tailors of the first class object to the cheap trades being recognized as tailoring at all. We believe this view to be wrong. They are in the trade, and in to stay, and will do less harm organized than unorganized." *The Tailor*, January, 1893, p. 4.

It is interesting to note that the Garment Workers' journal was opposed to the new systems of tailoring, claiming that the "special order" work was "a shrewd dodge for the purpose of deceiving the customer into the belief that he is obtaining custom work at ready-made prices." See article, "Cheap Custom Work a Deception," *The Tailor*, November, 1895, p. 6, reprinted from *The Garment Worker*. To understand this attitude of the Garment Workers it is necessary to recall that the cheap custom trade was taking away patronage from the ready-made clothing houses, as well as from the fine merchant tailors.

labor misunderstood, and in consequence thereof misunderstandings have occurred, and charters have been granted by one of the above unions to workers who were really under the jurisdiction of the other one, therefore

*Resolved*, By the American Federation of Labor in convention assembled, that we hereby recognize as the sole and exclusive jurisdiction of the J. T. U. of A. all custom tailors in the employ of merchant tailors in the United States and Canada, and the label of the J. T. U. of A. shall be the only label recognized as guaranteeing custom tailoring to be union made; and further

*Resolved*, That we recognize the United Garment Workers of America as having sole and exclusive jurisdiction over all workers in the manufacture of all clothing other than custom-made, as defined by these resolutions, and the label of the U. G. W. of A. shall be the only label recognized as guaranteeing such clothing to be union made.

*Resolved*, That the designation (merchant tailors) in these resolutions shall be construed to mean all establishments where custom tailoring is made to the measure and to the order of each individual customer.

These resolutions were adopted by the American Federation of Labor, and became the basis of demarcation between the Journeymen Tailors' Union and the United Garment Workers.<sup>19</sup> Shortly afterward the Tailors issued a manifesto in their official journal, advising the local unions to insist strictly upon their right to organize all work made to measure, and to report promptly all infringements.<sup>20</sup>

In order to bring their constitution into accord with the action of the American Federation of Labor, the Tailors, through their committee on laws and audit, which met in August, 1897, submitted to their membership an amendment which would admit to membership workers on cheap custom tailoring.<sup>21</sup> This amend-

<sup>19</sup> *The Tailor*, December, 1896, p. 7, Proceedings of the General Executive Board; January, 1897, p. 8.

<sup>20</sup> *The Tailor*, June, 1897, p. 8.

<sup>21</sup> *The Tailor*, August, 1897, p. 16, Proposition 1. Prior to 1897 there was no provision in the constitution of the Journeymen Tailors' Union for the admission to membership of any but journeymen tailors, their apprentices and helpers. The 1884, 1885, and 1887 constitution contained no express provision regarding jurisdiction or eligibility of members, except such as might be implied from the title, "Journeymen Tailors' Union." Express provisions confining eligibility to journeymen tailors, apprentices and helpers are found in the following constitutions and sections: 1889, Art. VI, Sec. 1; 1892, Sec. 21; 1894, Sec. 26; 1895, Sec. 25; 1896, Sec. 25. The term "journeyman tailor," as used in these constitutions, applied to skilled workers employed by regular merchant tailors doing a local business, and



ment was adopted by a vote of 2,133 to 233,<sup>22</sup> and was embodied in the constitution in a section reading as follows:<sup>23</sup>

The jurisdiction of the J. T. U. of A. shall be the United States and Canada, covering all tailors, helpers, apprentices and workers engaged in the production of custom made clothing (custom made clothing to be interpreted as all clothing made to the order and measure of each individual customer).

Although the amendment had been passed by a large majority, evidently its significance had not been fully realized by all of the members, for as soon as an effort was made to put it into effect, and certain "special order" firms, such as the Globe Tailoring Company, Nicoll the Tailor, and J. W. Losse<sup>24</sup> made application to have their establishments organized under the jurisdiction of the J. T. U. of A., protests arose from members in several localities.<sup>25</sup> These members feared that if firms of this type, located principally in the larger cities, were allowed to use the Journeymen Tailors' label, their agents would soon overrun the smaller towns where the journeymen tailors were employed, advertising their cheap goods as union-made, and injuring seriously the local trade. On the other hand, the supporters of the amendment, including the general secretary and the General Executive Board, argued that if the special order workers were not organized by the Journeymen Tailors' Union, they would be organized by the

did not apply to tailors employed by factories doing a "special order" or agency business, even though to the order and measure of customers.

<sup>22</sup> *The Tailor*, November, 1897, p. 8, vote on Proposition No. 1.

<sup>23</sup> *Constitution*, 1898, Sec. 2.

<sup>24</sup> The firm of J. W. Losse in St. Louis did a large agency business in the western states. In 1892 it was running under a team system, each team being in charge of a contractor. The local union of journeymen tailors in St. Louis induced the proprietor to abolish the contract system and to establish a union shop, in order to obtain the use of the union label. Later, apparently, the same firm fell out of the good graces of the union, for a boycott against it is advertised in several issues of the Tailors' journal in 1895 and 1896. See November, 1895, p. 9; December, 1895, p. 8; February, 1896, p. 9.

<sup>25</sup> See, for example, letter of F. Gessinger from Delano, Texas, in *The Tailor*, September, 1901, pp. 6-7. This member complains that the state of Texas is full of agents "who know absolutely nothing about tailoring but being slick talkers, they make many people believe that a tailor who charges them \$30 or \$35 for a suit is robbing them and that they can furnish as good a one for \$15, etc."



Garment Workers, and in this case the Tailors' Union would have no control over the conditions under which the cheaper garments were produced, and therefore no opportunity to reduce the effects of their competition. However, as the matter appeared to be causing a real controversy among the members, it was decided by the General Executive Board to resubmit the matter to a general vote. It was found that in addition to the constitutional section governing jurisdiction, there was another section vitally concerned with the matter at issue, which read as follows:

Sec. 169. (1898) The label shall not be used in the United States on any overcoat sold below \$22, or suit below \$22, or trousers below \$5; or in Canada on overcoats sold below \$15, suits below \$15, or trousers below \$3.50, or where the scale of prices for making is per hour in the United States below 20 cents, or in Canada below 15 cents.

In order to make it possible, in case the admission of special order workers should be approved, to use the Tailors' label on their work, regardless of the price at which the garments were sold, but at the same time to encourage a good scale of wages and the furnishing of suitable shops by the employers, the Executive Board recommended the following as a substitute for the section quoted above:

The label shall not be used in the United States on garments made for any firm where the scale of prices averages below twenty cents per hour, or in Canada where the scale paid averages below fifteen cents per hour. Nor shall the label be placed on any garment made outside of back-shops furnished free by the employers.

A vote was therefore called for (1) upon the question of organizing the workers on cheap custom trade; (2) upon the question of adopting the new Sec. 169 as proposed by the Board.<sup>26</sup> The result of the vote was as follows:<sup>27</sup>

In favor of organizing cheap custom trade.....	905
Against organizing cheap custom trade.....	1,695
In favor of new Sec. 169.....	1,104
Against new Sec. 169.....	1,454

Both propositions, therefore, were defeated.

Referring to the first proposition, as the most important, we find that an intelligent analysis of the vote is somewhat difficult.

<sup>26</sup> *The Tailor*, January, 1899, p. 9, Proceedings of the General Executive Board; February, 1899, p. 8, editorial; February, 1899, pp. 12-13, official notice calling for vote.

<sup>27</sup> *The Tailor*, March, 1899, p. 13.

as the vote did not appear to follow consistently any territorial lines nor any distinction between large and small cities. It is true that the large cities (over 100,000 population) gave a much smaller majority against the proposition than the smaller cities, but if the vote of Chicago, which was almost unanimous in favor of the proposition,<sup>28</sup> is eliminated, the large cities show a strong majority against the proposition.<sup>29</sup> It seems certain that the feeling of protest which we have described especially with reference to the smaller cities was not by any means confined to these cities, but was more or less general, involving not only a fear of the competition of the cheaper trade, but also a distinct prejudice against it on account of trade caste. This prejudice, which was first noted in connection with the efforts of the shop tailors to secure entrance to the custom tailors' union,<sup>30</sup> appears to have operated all through the history of the votes on the jurisdictional question.

Commenting on the vote, the general secretary wrote:<sup>31</sup>

We are now in a position where we can withdraw all claims to jurisdiction over this class of trade, and either the Garment Workers can take up their organization, or as there are not less than 50,000 of such workers in

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<sup>28</sup> In explanation of the strong vote of the Chicago union (379 to 1) in favor of the proposition, it should be noted that the Chicago union has usually been a strong supporter of the ideas represented by the Lennon administration. This union is one of the older unions and has been disposed toward a well-disciplined and conservative line of action.

<sup>29</sup> Twenty-seven cities of more than 100,000 population, including Chicago, gave the following vote: Yes, 635; No, 708. The same cities, except Chicago, gave Yes, 256; No, 707. The cities of less than 100,000 population gave Yes, 270; No, 987. About 25 unions in all failed to vote. Each of the following large cities gave a majority in favor of organizing the cheap custom tailoring firms: New York, Chicago, St. Louis, Syracuse, Atlanta, Winnipeg, St. Paul, Minneapolis, Toledo; total, 9 cities. Each of the following large cities gave a majority against organizing these firms: Denver, New Haven, Indianapolis, Louisville, New Orleans, Boston, Grand Rapids, Kansas City, Omaha, Cincinnati, Columbus, Philadelphia, Pittsburgh, Memphis, Nashville, Milwaukee, Spokane; total, 17 cities. The following large cities failed to vote: Birmingham, Los Angeles, Worcester, Oakland, San Francisco, Washington, Baltimore, Fall River, Detroit, Newark (N. J.), Albany, Rochester, Cleveland, Portland (Oregon), Scranton, Richmond, Toronto; total, 17 cities.

<sup>30</sup> Cf. *supra*, p. 86.

<sup>31</sup> *The Tailor*, March, 1899, p. 8.

the United States, they can start an international organization for themselves. What will be the outcome, no man can say.

In the course of the next two years a number of special order firms and firms making custom tailoring under a factory or team system were organized by the Garment Workers, and certain other employees of the same class of firms formed a union of their own, known as the "Custom Clothing Makers' Union." That all of the tailors' unions were not satisfied with this result is evident from the report of the general secretary to the committee on laws and audit which met in August, 1901. In this report he said:<sup>32</sup>

We now have our unions vigorously protesting against the organization of this class of trade either by the independent union or by the Garment Workers; and we have the vote of our general membership saying: "We cannot admit them into the J. T. U. of A." This policy we cannot longer pursue and maintain the respect and support of organized labor in the United States and Canada, nor can we pursue such a policy and maintain our own self-respect.

The committee decided that the question had become again of sufficient importance to require a vote, and gave it a leading place among the propositions which they submitted to the membership in 1901.<sup>33</sup> As in 1899, the vote was adverse to admitting the workers on cheap custom trade, the result being 1,212 in favor and 3,511 against.<sup>34</sup> The causes for the negative vote were no doubt similar to those which operated in 1899.

The question of the proper affiliation of the new Custom Clothing Makers' Union was introduced into the 1901 convention of the American Federation of Labor through the application of this union for a charter. The convention did not decide the matter at once, but left it open for discussion by representatives of the various organizations concerned. As one of these representatives, Secretary Lennon asked for advice from the local unions of the J. T. U. of A.<sup>35</sup> Sixty-one unions responded to this request. Eight locals favored the admission of the Custom Clothing Makers to the J. T. U. of A. without condition. Fourteen locals favored their being an auxiliary of the J. T. U. of A.

<sup>32</sup> *The Tailor*, August, 1901, p. 5.

<sup>33</sup> Report of committee on laws and audit, *The Tailor*, August, 1901, p. 13; same issue, p. 14, Proposition No. 1.

<sup>34</sup> *The Tailor*, November, 1901, supplement, vote on Proposition No. 1.

<sup>35</sup> *The Tailor*, January, 1902, editorial, p. 14.

with separate name and label. Twelve locals believed that they should become a part of the Garment Workers' organization. Finally, twenty-nine locals advised that they should be allowed to maintain a separate and distinct union, with such a title and label as would least conflict with those of the J. T. U. of A. After some conferences a charter was granted by the Executive Council of the American Federation of Labor to the workers on cheap custom trade, under the name of "The Special Order Clothing Makers' Union,"<sup>36</sup> but this charter was ultimately revoked by the full convention of the A. F. of L., and jurisdiction over the special order tailors was conceded to the Garment Workers.<sup>37</sup>

It might have been supposed that the question would now remain at rest, but in February, 1903, we find it arising again in the form of a resolution by the Executive Board of the Tailors: That, in view of the continued agitation among our members regarding the admission to membership of the Special Order Tailors, some unions being desirous of taking them in and some strongly opposed, the G. E. B. hereby requests every local union to send to the General Secretary on or before April 1, 1903, a statement regarding the wish of their members as to whether the G. E. B. shall again submit to a general vote the question of the admission to membership in the J. T. U. of A. of the Special Order Tailors.<sup>38</sup>

This resolution was embodied in an official circular sent out to all local unions, calling for a vote on the question as to whether a referendum on the question of the special order tailors should be taken, and containing further a proposed plan for constituting a Special Order Branch of the J. T. U. of A., in case the vote should be taken and should prove favorable to the admission of the special order tailors.<sup>39</sup> The returns showed 103 local unions in favor of a general vote, and 109 unions opposed.<sup>40</sup> However, the board decided to submit the question, inasmuch as the proposition to take a vote had been initiated by a local union in Chicago, and had been seconded by more than one-fourth of all the

<sup>36</sup> Proceedings of the Executive Council of the American Federation of Labor, April 15, 1902. In *American Federationist*, v. 9, p. 333.

<sup>37</sup> *Proceedings, A. F. of L.*, November, 1902, pp. 206-207.

<sup>38</sup> *The Tailor*, February, 1903, p. 16.

<sup>39</sup> For official circular and details of proposed plan, see *The Tailor*, March, 1903, p. 23.

<sup>40</sup> *The Tailor*, April, 1903, p. 20. Proceedings General Executive Board.



locals.<sup>41</sup> The question was submitted in the following form: "Shall the J. T. U. of A. claim jurisdiction over all persons engaged in the manufacture of custom tailoring, including what is known as the Special Order Tailors?"<sup>42</sup> The proposition was again defeated, but by a close vote.<sup>43</sup> Commenting on the vote in his report to the 1903 committee on laws and audit, the general secretary said:<sup>44</sup>

Our members have by their votes said practically that these people belong to the Garment Workers and this fact in view of all the circumstances surrounding the case must be considered absolute and final; the question never to be reopened in the future. I believe we should claim, and I am confident the Garment Workers will have no objection, jurisdiction over all regular merchant tailoring establishments and the people making their work. . . . What I mean by a legitimate merchant tailor is one that does in the main a local merchant tailoring business.

In the same report the general secretary recommended that an agreement be reached with the Garment Workers' Union with reference to the precise line of demarcation between that union and the tailors, and this recommendation was concurred in by the committee.

The 1903 committee made one or two slight changes in the jurisdiction clause, by which workers on custom tailoring on ladies' dresses and suits, and also bushelmen employed in merchant tailoring and retail ready-made clothing establishments, would be expressly eligible to membership.<sup>45</sup> These changes were approved by a general vote.<sup>46</sup>

In accord with the recommendation of the committee on laws and audit, the Executive Board at its meeting of September 7, 1903, appointed a committee of three to meet with a like committee of the Garment Workers' Union "to see if the lines of jurisdiction cannot be clearly set forth, or some kind of an alliance between the organizations effected that will be to the benefit of both."<sup>47</sup> These committees met, and as the result of their

<sup>41</sup> *Constitution*, 1902, Sec. 105; *The Tailor*, May, 1903, editorial, p. 14.

<sup>42</sup> Official circular, *The Tailor*, May, 1903, p. 18.

<sup>43</sup> 3,657 to 3,422. *The Tailor*, August, 1903, pp. 22-24.

<sup>44</sup> *The Tailor*, August, 1903, p. 5.

<sup>45</sup> *The Tailor*, August, 1903, p. 25, Proposition No. 1.

<sup>46</sup> *The Tailor*, November, 1903, supplement, vote on Proposition No. 1.

<sup>47</sup> Proceedings of the General Executive Board, *The Tailor*, September, 1903, p. 16.

deliberations, an agreement was drawn up, dated October 19, 1903, the essential feature of which was that custom tailoring establishments selling suits at \$25 or more in the United States, or \$18 or more in Canada, should come under the jurisdiction of the J. T. U. of A., whether the "old-line" journeymen system or the factory system was employed; but that establishments employing the factory system, and selling suits at a price lower than set forth above, should come under the jurisdiction of the United Garment Workers of America. There were, in addition, some minor clauses which provided for the furtherance of common interests on the part of the two unions.<sup>48</sup>

The agreement of 1903 was not found to be very satisfactory, mainly for the reason that where the prejudice on the part of the custom tailors against organizing the cheap trade still prevailed, they would not organize even that portion of it which the agreement placed under their jurisdiction, and the consequence was that the officers of the Tailors had no recourse except to relinquish the trade in such places to the Garment Workers. In New York City, for example, the Journeymen Tailors' Union has never maintained any jurisdiction over anything but regular merchant tailoring stores, and the special order trade, as far as it has been organized at all, has been organized by one or another of the Garment Workers' organizations.

The 1905 convention of the Tailors passed a resolution, which was approved by the membership, to the effect that the 1903 agreement, while it was the best to be had at the time, was no longer adequate, and that further negotiations with the Garment Workers should be entered into.<sup>49</sup> As a result, a plan of amalgamation was drawn up by a joint committee of the two organizations, but was defeated by both organizations on a referendum vote. Under the proposed plan the amalgamated organization would have been known as "The Garment Workers' and Tailors' International Union." It would have consisted of four branches: (1) custom tailors, (2) cutters, (3) workers on ready-made clothing, (4) workers on overalls, shirts, etc. The plan apparently did not command adequate attention in either organization, but as far as it was given consideration, the defeat seems to have

<sup>48</sup> For the agreement in full, see *The Tailor*, November, 1903, p. 9.

<sup>49</sup> *The Tailor*, March, 1905, p. 5, Proposition No. 37.

been due to criticism of details rather than of the general ideas.<sup>50</sup> The vote of the Tailors' Union on the plan was 4,083 to 2,382 against the proposition. The vote of the Garment Workers was 3,206 to 2,989 against it.<sup>51</sup>

When the Journeymen Tailors' Union met in convention in Buffalo in 1909, the question of the cheap trade was presented in a very acute form. Since the previous convention, in 1905, the making of custom work in factories or on a team system had made greater progress than ever before.<sup>52</sup> The effect upon the Tailors' Union, which, as we have seen, had repeatedly refused to organize workers on the new systems, was very apparent, there being not only no increase, but an appreciable decline in membership in the four years: while in a number of smaller cities the old-line merchant tailoring was nearly destroyed.<sup>53</sup> Awakening

<sup>50</sup> Proposed plan, *The Tailor*, October, 1905, pp. 1-4; vote, February, 1906, p. 20; editorial comment on vote, February, 1906, p. 14. Some comments on the plan from the Garment Workers' standpoint are found in the *Weekly Bulletin of the Clothing Trades*, November 3, 1905, p. 3, article by S. L. Landers, and p. 4, article on "Problems of Amalgamation," reprinted from *Syracuse Industrial Weekly*.

<sup>51</sup> Correspondence with Garment Workers' headquarters.

<sup>52</sup> See editorials in *The Tailor*, especially March, 1908; August, 1908; February, 1909; June, 1909; September, 1908.

<sup>53</sup> No accurate figures are available for the total membership in benefit at any given date, but from 1890 to 1912 the figures are available for the paid-up membership at the end of each month, these figures having been ascertained by actual count from the registers at headquarters, and published in the 1913 report of Secretary Brais. The paid-up membership at any given date is less than the membership in benefit, since members are allowed to become three months and seven days in arrears before they are suspended. However, for comparative purposes the figures in Mr. Brais' report are the best hitherto published. His report shows that on July 1, 1905, the paid-up membership was 12,500; and on July 1, 1909, 11,822; indicating a decline in the four years of 678. There seem to have been two principal reasons for this decline: (1) the financial depression of 1907; (2) the rise of cheap custom tailoring firms. The influence of the panic is clearly seen by comparing the maximum membership during the four years (12,888 on July 1, 1907) with the minimum membership during the same period (11,379 on October 1, 1908). In this period of fifteen months there was a decline of 1,509 in the paid-up membership, or more than twice the net decline for the four years. Nevertheless, the rise of the new systems of tailoring, if not equally obvious, was certainly another cause of the decline in membership. There are a number of small cities, particularly those within range of the St. Louis and Indianapolis special order firms, in which

to these facts, to which attention was forcibly called in the secretary's report,<sup>54</sup> the convention adopted a resolution that the Journeymen Tailors' Union of America should claim jurisdiction "over all workers engaged in the manufacture of legitimate custom tailoring, no matter what system of work is used."<sup>55</sup> In the same resolution, delegates of the Tailors' Union to the American Federation of Labor were directed to present the above claim to the convention of that body; a federation of the J. T. U. of A., the Garment Workers and kindred organizations was favored; and the substitution of time or weekly wages for the piece system was recommended. The resolution was approved by a referendum vote of the members,<sup>56</sup> and became a part of the law of the organization January 1, 1910.<sup>57</sup>

To understand fully the meaning and limitations of the new claim as to jurisdiction, it is necessary to recall that the old-style merchant tailoring was being undermined in two ways: (1) by mail order or "special order" firms located principally in large cities, and manufacturing garments to measure on a factory system; (2) by firms doing a local custom tailoring business on a factory or team system, this class including for the most part firms which formerly had operated on the old plan, but which had changed their system so as to subdivide the labor in a different fashion and to pay everybody by the week. There is a difference of opinion among prominent members who were in attendance at the Buffalo convention as to whether the delegates who voted for the resolution intended to claim jurisdiction over both classes of firms, or simply over the second class. It is the opinion of Mr. Lennon, who was general secretary of the union at the time of the convention, that<sup>58</sup>

the intention of the Buffalo convention was to include under our jurisdiction all custom tailoring, no matter under what system of work it is made; not only such houses as Bell's in New York, but all the firms between his and

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the local unions of tailors have been completely wiped out. For Mr. Brais' report, see *The Tailor*, August, 1913, p. 5.

<sup>54</sup> *The Tailor*, August, 1909, p. 6, report on "Membership;" pp. 8-9, report on "Our Jurisdiction."

<sup>55</sup> *The Tailor*, August, 1909, p. 44, Proposition No. 40.

<sup>56</sup> *The Tailor*, November, 1909, supplement, vote on Proposition No. 40. The vote was 3,971 to 1,319 in favor of the proposition.

<sup>57</sup> *Constitution*, 1910, Sec. 175.

<sup>58</sup> Correspondence, March 13, 1912. Mr. Lennon's personal position was



Scotch Woolen Mills, Kahn, etc., etc.; in fact, all clothing made to the measure of each individual customer.

On the other hand, Mr. Brais, who was chairman of the convention, and who succeeded Mr. Lennon as secretary in 1910, has given his opinion that the immediate supporters of the resolution and those who worked for its adoption had the same view as that quoted from Mr. Lennon above, but that the delegates in general did not have in mind the "long-distance" firms, but only those doing a local business.<sup>59</sup>

a little less sweeping. In commenting upon the proposed extension of jurisdiction, while the vote was pending, he said:

"I believe that the legitimate custom tailoring, no matter what form of work is used to turn it out, should be under our jurisdiction. But I wish to emphasize the word 'legitimate.' I am not in favor of organizing everything that somebody calls custom tailoring and thereby absolutely wipe out of existence the possibility of protecting the interest of the old line journeyman tailor who is still employed single-handed or with one helper." *The Tailor*, September, 1909, p. 3, comment on Proposition No. 40.

And in his letter accepting the nomination for secretary in 1909, Mr. Lennon said further, referring to factory and team work (particularly in the second class of houses noted above):

"I believe that the aim of our union should be to place this class of work entirely under a weekly system where the employer furnishes the factory or shop and hires all his help, both men and women, by the week at proper wage and reasonable hours of labor. And that all contract work should be prohibited just as rapidly as possible, and all persons who are 'go-betweens' as between the proprietor and those who actually do the work should be eliminated, and whatever of factory system we must have in the custom tailoring, that it shall be without contractors or sub-contractors of any kind, shape or description. . . . I believe as the factory system advances, displacing journeymen tailors that the shop should be organized and the journeymen tailors given the work and not somebody else. . . . As to the organization of shops that are making their work under a factory system in any particular locality, I believe that the local union in existence, if there is one, should be primarily the judges as to whether such shop shall or shall not be organized, and that the organization shall be governed accordingly." *The Tailor*, October, 1909, p. 4.

<sup>59</sup> "The convention, being composed of journeymen tailors who were working under the old system of production, had in mind stores that they were working in, but who in time would adopt the new system of production or team system. It is my opinion that the delegates had no intention of organizing firms who do long distance tailoring, as that would injure the small towns and locals. But those of us who were back of this resolution and who fought for its adoption meant all classes of tailoring that is made to the individual measure of the customer." E. J. Brais, correspondence, March 15, 1912.

In accord with the instructions of the 1909 convention, the Tailors' delegates presented to the convention of the American Federation of Labor the claim for jurisdiction embodied in the new resolution. The claim was referred to the Executive Council, with instructions that the council bring about a conference between representatives of the Tailors' Union and of the Garment Workers' Union for the purpose of dealing with the matter at issue.<sup>60</sup> However, no record of any such conference is found prior to the 1910 convention of the American Federation of Labor. At this convention the delegates representing the Journeymen Tailors' Union of America, the United Garment Workers of America, and the Ladies' Garment Workers' Union, held a conference, but were prevented by lack of time from any exhaustive discussion. However, it was agreed that in the case of any large trade movement or strike by any of the organizations, all three would cooperate as far as possible for the success of such movement. It was further agreed, provided the executive boards of the international unions approved, that a conference be held shortly in New York City between representatives of the organizations concerned 'to promote and work out if possible some further means of practical cooperation, federation or amalgamation.'<sup>61</sup> In accord with this action the General Executive Board of the Journeymen Tailors' Union appointed two delegates to attend the conference whenever it should be held.<sup>62</sup> Secretary Brais, one of the delegates appointed, called upon the representatives of the other organizations in New York City during the month of February, 1911, but nothing of a definite character was effected.<sup>63</sup>

In an article dated January 1, 1912, former Secretary Lennon suggested the elements of a plan of amalgamation, under which the Garment Workers', Ladies' Garment Workers' and Journeymen Tailors' organizations would form a single international union, but the local unions of each branch of the industry would

<sup>60</sup> *Proceedings, A. F. of L. Convention*, 1909, pp. 125, 220, 291-292; *The Tailor*, December, 1909, pp. 21-22, report of Tailors' delegates.

<sup>61</sup> *The Tailor*, December, 1910, p. 5, reports of Tailors' delegates to 1910 convention of American Federation of Labor.

<sup>62</sup> *The Tailor*, December, 1910, p. 25, Proceedings of the General Executive Board for December 4, 1910.

<sup>63</sup> *The Tailor*, March, 1911, p. 23.

be organized separately and have local autonomy.<sup>64</sup> This plan was never acted upon officially.

In the early part of 1912 a tendency could be noticed on the part of the Journeymen Tailors to take the fullest possible advantage of the claim for extended jurisdiction adopted in 1909. In an editorial in the February, 1912, *Tailor*, Secretary Brais said:

We again wish to call the attention of all locals and members that our jurisdiction includes all custom tailors both in men's and ladies' trade, made under any system of production, whether it be individual production, piece work, week work, sectional or team work; all bushelmen in all classes of trade, in clothing stores, cleaning and pressing establishments, pressers and helpers in any of the above. We are aiming at a thorough organization of the trade in all of its branches and concede jurisdiction of any part of it to no organization. Our members must be on guard and let no opportunity slip to effect organization in any of the above establishments.

As far as employees of pressing and cleaning establishments were concerned, there was considerable reason for claiming jurisdiction over such employees, as they were doing work of a kind done in all tailor shops, and in fact jurisdiction over them, with the exception of employees of pressing, dyeing and cleaning shops connected with laundries, was later conceded to the Tailors' Union by the Executive Council of the American Federation of Labor.<sup>65</sup> In the matter, however, of organizing the cheaper branches of the custom trade, opposition was met with from the Garment Workers. Efforts by the Tailors in New York City to secure a mass meeting of clothing workers were interfered with by the Garment Workers, on the ground that the Tailors were trespassing on the jurisdiction of the latter.<sup>66</sup> Similar controversies arose in St. Louis,<sup>67</sup> Brantford, Ont.,<sup>68</sup> Newark, N. J.,<sup>69</sup> and in other places, the complainants being now on one side, and now on the other. In some cases the Ladies' Garment Workers.

<sup>64</sup> *The Tailor*, January, 1912, pp. 19-20.

<sup>65</sup> Abstract of Minutes of meeting of Executive Council of American Federation of Labor, August 12-19, 1912. In *American Federationist*, v. 19, p. 857. In 1916 jurisdiction over employees of dyeing, pressing and cleaning establishments connected with laundries was granted to the Laundry Workers' International Union. *Proceedings, A. F. of L.*, 1916, p. 123.

<sup>66</sup> *The Tailor*, January, 1912, p. 25, report of Organizer Emanuel Jacobs.

<sup>67</sup> *The Tailor*, March, 1912, pp. 22-23, report of Organizer F. Petera.

<sup>68</sup> *The Tailor*, March 1912, pp. 28-29, report of Organizer Hugh Robinson.

<sup>69</sup> *The Tailor*, April, 1912, p. 26, report of Organizer Thomas Sweeney.



as well as the workers on men's clothing, were involved. The objections of the United Garment Workers to the Tailors' policy appeared strongly in an article<sup>70</sup> in the *Weekly Bulletin*, the organ of the Garment Workers, in which the agreement of 1903 between the J. T. U. of A. and the United Garment Workers was cited, and it was alleged that this agreement had not been lived up to by the tailors. Evidently some of these controversies were appealed to the American Federation of Labor, for in the report of the meeting of the Executive Council for May 9-17, 1912,<sup>71</sup> appears the following:

On the controversy between the Journeymen Tailors' Union of America and the United Garment Workers of America in regard to the charge of transgression of the Garment Workers on the jurisdiction of the Tailors, it was directed that a conference of both organizations be called to meet at Washington with President Gompers, if the latter is in the city at the time; if not, that Secretary Morrison meet with them.

In accord with the directions of the Executive Council, a conference was held in Washington, September 30, 1912, between three representatives of the Journeymen Tailors' Union, two representatives of the United Garment Workers, and three representatives of the Ladies' Garment Workers. In his report upon this conference, Secretary Brais of the Tailors said:<sup>72</sup>

Many things relative to an amalgamation were discussed. It seemed, however, that the time for an amalgamation has not arrived, as each international union has many problems confronting them which will take some time to solve. The forms of organization are not similar, the systems of dues and benefits are different, and the belief that exists in the minds of some of the representatives that an amalgamation could not work successfully, were handicaps that could not be overcome.

However, it was adopted as the sense of the conference that amalgamation of the three organizations into one should finally take place; that as soon as practicable the headquarters of the three organizations should be in one city, and that there should be selected by each of the organizations at interest a committee of three, these committees to hold frequent conferences and endeavor to work out a practical plan of amalgamation.

Little appears to have resulted from the plan adopted by this

<sup>70</sup> Reprinted in *The Tailor*, March, 1912, pp. 17-18.

<sup>71</sup> *American Federationist*, v. 19, p. 570; *Proceedings, A. F. of L.*, 1912, Report of Executive Council, pp. 118-119.

<sup>72</sup> *The Tailor*, October, 1912, pp. 15-16, general secretary's report.



conference. The Garment Workers were shortly occupied with a great strike in New York City, which was not settled until February, 1912, and this probably accounts to a considerable extent for the neglect of the amalgamation proposition. In fact it was not until the 1913 convention of the Tailors' Union that the question again became prominent.

During the four years between the 1909 and 1913 conventions it had become increasingly evident that a single organization in the tailoring industry would be an advantage to the workers. The cheaper systems continued to encroach upon the old-line work; numerous custom merchants changed or tried to change their shops to a factory system; strikes on the part of workmen to prevent this change as a rule were failures, and strikes for other purposes were handicapped by the fact that workers normally engaged on cheap custom tailoring could be secured to take the places of the strikers, or, what amounted to the same thing, the local merchant involved in a strike could send his work away to other cities, where it would be made by the cheap workers. In view of these facts, when the convention of the Journeymen Tailors' Union met in Bloomington, Ill., August 4, 1913, Secretary Brais recommended strongly to the convention a radical change of policy.<sup>73</sup> The difficulty of organizing cheap workers under a system of dues and benefits adapted to better paid workers was pointed out, as well as the necessity for an industrial union covering the whole tailoring industry. It was therefore recommended by the secretary that the Journeymen Tailors' Union of America should change its name to read, "Tailors' Industrial Union;" should lower the dues; should abolish ultimately the sick and death benefit, and reduce the strike benefit; and should claim jurisdiction over all workers in the tailoring industry, not only those engaged in the custom branch (regular custom tailors, factory, special order and team workers, bushelmen, helpers and apprentices, pressers, dyers and cleaners), but also the garment workers employed on ready-made clothing.<sup>74</sup>

<sup>73</sup> Report of Secretary Brais, *The Tailor*, August, 1913, pp. 2-16.

<sup>74</sup> In explanation of this claim, it was stated later by Secretary Brais that it was not the intention of the Tailors' Union to assume jurisdiction over garment workers already organized by other unions. The Tailors' Union claimed only the right to take in unorganized workers, no matter what branch of the industry they belonged to. "The unorganized belong to any

This proposition was well received by the convention, especially by the Socialist wing, which is well known to be in favor of industrial unionism as opposed to craft unionism. Opposition developed from a few delegates, who maintained that the proposed action, in trespassing upon the jurisdiction of the United Garment Workers and of the Ladies' Garment Workers, was in violation of the constitution of the American Federation of Labor, with which the Journeymen Tailors' Union of America was affiliated. These delegates favored the end in view, namely, the unification or alliance of all trade union interests in the clothing trades, but preferred to respect the authority of the American Federation of Labor while endeavoring to secure an adjustment of the whole matter. In spite of this protest the resolution to claim full jurisdiction in the tailoring industry was carried by a vote of 111 to 9. The convention voted also to change the name of the organization to "Tailors' Industrial Union, International," and passed a resolution favorable to forming one union in the tailoring industry. When it came to the question of reducing benefits, the convention refused to make any change in the sick benefit, but a virtual reduction of the death benefit was recommended in a proposition to extend the term of continuous membership required to secure the maximum benefit of \$100 from four to ten years, with corresponding changes in the terms of membership required to secure the smaller amounts. It was also voted to reduce the strike benefit to \$5 a week.<sup>75</sup> On the question of dues, the only concession that could be secured from the convention was to reduce the dues of helpers earning less than \$12 a week to 40 cents a month, provided they would not claim sick or

organization that can get them, and we hardly believe that any fair minded man will deny us the right to organize in this unorganized field." Editorial by E. J. Brais, *The Tailor*, May, 1914, p. 2.

<sup>75</sup> Under the existing constitution the strike benefit was six dollars a week, where the strike or lockout lasted less than six weeks, and nine dollars a week after a strike or lockout had been on more than six weeks. *Constitution*, 1910, Sec. 59. The new proposition was to establish a uniform benefit of five dollars per week, regardless of the duration of the strike. It was felt that the old rule would be too great a strain upon the treasury of the union, particularly if the extension of jurisdiction should bring in a considerable number of new members in need of help to raise their wages.

death benefits; otherwise they should pay full dues; i. e., 65 cents a month to the national union, and local dues as required by the local union.<sup>76</sup>

When the action of the convention was submitted to a referendum vote, all of the recommendations noted above were carried, except the proposition to modify the death benefit. As a net result, therefore, the jurisdiction was extended, the name changed, the strike benefit reduced to \$5 a week, and the dues of helpers decreased.<sup>77</sup>

The new claims of the Tailors' Union with reference to jurisdiction aroused immediate indignation in the ranks of the Garment Workers, especially when the Tailors began carrying out their policy in earnest and began to organize employees claimed by the Garment Workers' organization. The result was that a protest was filed with the American Federation of Labor by the United Garment Workers of America. As is customary in such cases, the Executive Council of the American Federation of Labor directed first that the Tailors' Union and the Garment Workers' Union should hold a conference and endeavor to adjust their differences themselves.<sup>78</sup> On December 19, 1913, the Executive Board of the Tailors' Union addressed a communication to the Executive Council of the American Federation of Labor, and as this letter contains a statement of the position of the Tailors' Union, it is considered worth while to quote a portion of it: <sup>79</sup>

At this time there are three separate organizations or international unions operating in the industry, all of them doing their best individually, but in no way united or working together. The action of our members may result in a jurisdiction controversy; in such contention, entailing a great waste of time, money and energy fighting each other; all of which should be expended for the purpose of organizing the industry and solidifying the ranks and harmonizing our efforts for the one purpose, that of uplifting the workers.

Gentlemen, we have no desire to enter into a controversy of this kind and sincerely hope to avoid it; and we presume that the other organizations in question also dislike a struggle of this character. Therefore, we respectfully request the assistance and advice of your honorable body to recommend

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<sup>76</sup> Proceedings of the 1913 convention, *The Tailor*, August, 1913.

<sup>77</sup> See Propositions 2, 3, 4, 20, 30, 31 and 38, *The Tailor*, September, 1913, pp. 3-15; also vote on same, *The Tailor*, November, 1913, supplement.

<sup>78</sup> *The Tailor*, January, 1914, p. 5.

<sup>79</sup> *The Tailor*, January, 1914, pp. 23-24.



a plan of action that will be satisfactory to all concerned; thus avoiding an unnecessary struggle between the organizations directly interested.

We respectfully suggest the following: That the three international unions operating in the clothing trades, viz.: The International Ladies' Garment Workers' Union, the United Garment Workers of America and the Tailors' Industrial Union (as it will be known after January 1, 1914) be instructed or requested to coöperate to organize the workers in the clothing industry, this being the main object.

That either of the three International Unions be recognized as having the right to organize non-union workers in the clothing industry, and affiliate them with the Union during the organizing work, until such time as amalgamation may be secured.

That, after new organization has been effected in any establishment or city, that the matter of their affiliation be left entirely to the wisdom and judgment of the newly organized workers.

That there be a general and free exchange of cards from one organization to another.

That in case where firms desire to terminate their agreement at the expiration of same, with one organization, and enter into agreement with another, the matter be decided upon by joint committee and that the decision of the committee be binding upon all parties concerned.

That the organizations in question coöperate to every other extent to bring about the much desired end, that of strong, powerful and efficient organizations in the clothing trades.

The representatives of our organization are ready and willing at all times to meet representatives of the other two organizations with a view to arriving at an amicable adjustment.

On January 19, 1914, representatives of the Tailors' Industrial Union and of the United Garment Workers of America appeared before the Executive Council of the American Federation of Labor to argue their respective claims. On February 2, 1914, the following letter, containing the decision of the Executive Council, was sent to Secretary Brais of the Tailors' Union:

Washington, D. C., February 2, 1914.

Mr. E. J. Brais,

Dear Sir and Brother:—

The Executive Council of the A. F. of L. at its session, January 19 to 24, considered carefully all of the matter presented, both orally and in writing by your organization in support of its application for change of title and extension of jurisdiction reached and the decision of the Executive Council is as follows:

“The Executive Council of the American Federation of Labor finds such change of name and extension of jurisdiction to be a violation of the law of the Federation, Section 11 of Article 19, as follows:

“‘No affiliated international, national or local union shall be permitted to change its title or name, if any trespass is made thereby on the juris-



diction of an affiliated organization, without having first obtained the consent and approval of a convention of the American Federation of Labor.'

"The representatives of the Journeymen Tailors' Union of America and the United Garment Workers of America appearing before the Executive Council at the hearing, all contended that the desire of both was for amalgamation of the two unions into one, and the Executive Council, therefore, requests the unions at interest to hold a conference of representatives of the two unions within sixty days, with the object in view of effecting, if possible, consolidation of the two unions into one, and the Executive Council tenders its good offices to be helpful in every way possible to bring about such organization."

You will please accept this as official notification of the action of the Council in this matter. I shall be glad to have you advise me as to what steps are taken by your organization for holding the conference as suggested by the Executive Council. I should add that a letter similar to this is being sent to the Executive officers of the United Garment Workers of America and the Ladies' Garment Workers' Union. With best wishes, and hoping to hear from you whenever convenient, I am

Fraternally yours,

SAMUEL GOMPERS

President, American Federation of Labor.<sup>80</sup>

In order to understand subsequent developments in the clothing industry, it is necessary to relate these developments to certain larger movements.<sup>81</sup> It is well known to students of the labor movement that for a number of years there have been fairly well-defined factions among the members of the American Federation of Labor. At one extreme are the conservatives, who recognize the present industrial system as a necessary basis for trade union policy, and who adhere to the craft union and to the present administration of the American Federation of Labor. The members of this group are either "old party" adherents or else vote independently for those candidates regardless of party whose record or promises with reference to labor legislation are satisfactory.<sup>82</sup> At the other extreme are the radicals, who favor

<sup>80</sup> *The Tailor*, February, 1914, p. 18.

<sup>81</sup> Up to this point the jurisdictional question in the clothing trades, and the effort to secure an understanding among the various organizations, were mainly trade union matters internal to the industry, and had only a limited connection with political movements (*cf. supra*, pp. 85, 103) or with the development of factions in the general labor movement. From now on, however, the relation of the movements in the tailoring trade to the Socialist and industrial unionist movement as a whole assumes an increasing importance.

<sup>82</sup> The conditions in the recent election, in which probably a majority of

industrial unionism, and who are eager for "education" and political activity along Socialist lines. This group is quite uniformly opposed to the present administration, headed by President Gompers, and favors the referendum rather than the convention for the election of A. F. of L. officers, hoping in this way to elect more "progressive" candidates. Finally we distinguish a middle group, which we may call if we like the "liberal" group, whose members favor trade union methods for trade union purposes, but are impatient toward the old parties politically, and have no bias in favor of craft unionism, if federations, alliances or amalgamations can be proved to be more effective. In this group would be found both adherents and opponents of President Gompers. It is obvious that it is impossible to draw the line sharply. For example, even the "conservatives," as here defined, favor the alliance or amalgamation of closely related trades, as a method of settling jurisdictional disputes, provided all of the factions are agreeable. But in a general way the differences of opinion here outlined exist, and the terms "conservative" and "radical" (or "progressive") would be intelligible to any trade unionist, while he would recognize the existence of a middle group corresponding to what we have called the "liberals."

The movement in the direction of radical opinion, as above outlined, has been of great importance in the history of the Tailors' Union, particularly in the last fifteen years.<sup>83</sup> The election of 1909, when Secretary Lennon was superseded by Secretary Brais, was regarded by the latter's supporters as something in the nature of a Socialist revolution. Mr. Brais was recognized in the Buffalo convention as the leader of the radical group, (or "Progressives," as they called themselves)<sup>84</sup> and became a candidate for secretary on a frank Socialist and industrial union-

the members of the A. F. of L. supported President Wilson, must be regarded as somewhat exceptional.

<sup>83</sup> The first clear-cut effort to commit the Tailors' Union officially to Socialist principles appears to have been made in 1903, when a proposition to endorse the national platform of the Socialist party was submitted to the committee on laws and audit by the Fargo, N. D., local union. *The Tailor*, August, 1903, p. 16, col. 2.

<sup>84</sup> Mr. Brais no doubt numbered among his supporters also some members who would be classed as "liberals" under our foregoing analysis.

ist platform.<sup>85</sup> Following his inauguration the tone of the official journal became increasingly Socialistic, and it was under his administration that the radical changes of 1913 were initiated.

<sup>85</sup> The respective positions of the leading candidates in this election are indicated by the following extracts from their letters of acceptance:

Extract from letter of acceptance of E. J. Brais; *The Tailor*, November, 1909, p. 1:

"Industrial conditions determine the well-being of the worker, and dictate an industrial form of organization, that can promote and defend his interest of today and meet the requirements of the future.

"The integral Industrial Union is superior to all others to meet the needs of education and organization of the working class. Another important weapon which the workers must recognize and use, is the ballot. I do not want anyone to misunderstand me, or run away with the idea that it is a dream, not practical, that it is contrary to trade unionism or in opposition to the trade union movement. I am a trade unionist, am not trying to blend trade unionism with politics, but I do stand for political action of workers, independent of the parties that represent the exploiting class, believing that it would be of great benefit to the working class. I do not want the unions to go into politics, but I do want the members as individuals to go to the polls and vote for their interest. This I shall advocate wherever and whenever possible."

Extract from letter of acceptance of John B. Lennon; *The Tailor*, October, 1909, pp. 4-5:

"Much has been said in the trade union movement, and in our union as well as others, regarding the matter of being progressive as to political action by the working classes. Some of our members, some outside our union, have charged me with being reactionary. The charge is absolutely false and without foundation in fact, but I am perfectly willing to state just what I believe upon this subject, and I do not want to be misunderstood by anybody. In our country, it is self-evident that the wage-workers are not yet ready to act unitedly along political lines. There is no general agreement as to what the proper line of political action should be. Consequently, any official action by a union can be only a disturbing factor in an organization and not one promoting harmony and unity in the accomplishment of better trade conditions. I believe that in accord with the fundamental principles of trade unionism every member has a right to hold and exercise such political and religious views as their own reason and conscience may dictate without any official interference from the organization. . . . A member has a right under the laws and principles of trade unionism to be a Catholic or a Protestant or an Agnostic, as he chooses, and the organization has no right whatever, nor have the officers any right, to interfere with the exercise of that privilege by the individual member in any way, shape or manner. And what is true of a man's religious belief is equally true politically. They have a right to be Socialists,



There is strong evidence that the campaign which resulted in these changes in the Tailors' Union was only part of a larger campaign for the control of the whole union movement in the clothing industry by the Socialists and industrial unionists.

For some time there had been unrest in the United Garment Workers' and the Ladies' Garment Workers' organizations, on account of the alleged conservatism of the men at the head of these organizations. These officers were of the "old school" represented by President Gompers and other leaders of the American Federation of Labor. Friction between this type of men and the members of the garment workers' unions was inevitable. Many of the immigrants who have come over by the

Democrats, Republicans, Prohibitionists or anything or nothing in politics they each one desire; and the organization has no right to interfere. . . . We need in the trade union to make it a success men and women of all religious views and men and women of all political views. If some faith or some party is made a requisite of membership, then there will be no union left, and nothing accomplished, and I am against anything of that kind. . . . I hold that the trade union is the logical and only possible practical step that the wage-working class of the world could adopt at this time for the promotion of their industrial betterment. . . . Philosophers, poets and would-be economists have spun most beautiful theories—beautiful to them at any rate—as to the complete emancipation of the workers from all injustices imposed upon them. As dreams they were a success. As emancipators they were a failure. The trade union as a dream is a failure. As a practical evolutionary method of improving the social, industrial, physical and moral condition of the working classes, it is the greatest success the world has seen."

It should not be supposed that the only issues in the election were those outlined in the above letters. There is good reason to believe that the presence of real or imagined grievances against the administration resulting from the control of strikes and other matters handled from headquarters, together with a campaign of personal abuse which was carried on by certain members who believed themselves to be personally wronged by the general secretary, had much to do with the result; and there is some evidence that the "wet" and "dry" issue was not altogether absent, Mr. Lennon being well known as a "dry" advocate. In fact, it is not by any means certain that upon the Socialist and industrial unionist issues alone Mr. Brais could have been elected. An analysis of the vote in the 1909 election, as compared with the vote on amalgamation with a certain faction of the garment workers in 1914 (*infra*, p. 113) shows clearly that the vote for Lennon and Brais did not by any means follow the question of conservative or "progressive" doctrines as a sole issue.



thousands from Europe in recent years and entered the clothing trades do not accept with good grace the restraints of conservative unionism, nor do they lay aside readily the syndicalist tendencies so prevalent today in Europe. In justice it should be said that in some localities, notably New York and Chicago, the garment workers have conducted large and successful strikes, in some cases without being affiliated at the outset with the national unions at all. The success of these strikes, however, has depended largely upon public sympathy and upon the donations of unions throughout the country. In fact, in many cases the workers have joined the union solely to participate in the strike, and when the object of the strike was accomplished, they have ceased to pay dues.<sup>86</sup> But the success of such strikes, coupled

<sup>86</sup> A somewhat humorous account of a garment workers' strike from the journeymen tailors' standpoint is found in the following editorial (*The Tailor*, June 1, 1915, p. 3):

"The only way the U. G. W. can increase their membership is through the means of a general strike. When the strike is over thousands drop the union, until there is another general strike. A general strike in the ready-made clothing trade is a money-making proposition. Months before the strike is declared they take in so-called members on the payment of fifty cents; when the strike is declared they charge them no less than three dollars. . . . When the strike is on a few weeks, the national officers, under the guiding light of a lawyer, make agreements with as many firms as they can and then announce that the strike is over. As soon as the strike is declared, the hat is passed in all unions in the country by some of the most skillful beggars."

The above account may appear to be a little biased, but is confirmed in a measure by the following statements from the Garment Workers' journal itself:

"Owing to the struggle between capital and labor, the odds are against us, mainly because, first, only a part of the workers are organized, and secondly, those who are organized, and who receive through their union higher wages and better working conditions, often fail to maintain their membership, believing that there is no necessity of paying their dues, and that whenever need arises, caused by poorer conditions, etc., they can again affiliate, knowing that the lapse in their membership will not result in any form of punishment or loss to them in benefits, as would be the case if such funds [i. e., benefit funds] existed." (Report of President Rieckert of the United Garment Workers to the 1914 convention, Nashville, October 12-17, 1914. *The Garment Worker*, October 16, 1914, p. 1.)

Also the following, from same report, p. 6:

"A few months before the strike the total membership in Greater New York averaged less than four thousand. . . . A general strike was

with the spread of Socialist and industrialist ideas, has led the workers to believe that the mass movement, the industrial union and the general strike are more effective weapons than craft unionism, conservative leadership and the accumulation of a strike fund. To indicate all of the reasons for the estrangement between a large element of the Garment Workers and their national officers would lead us too far afield.<sup>87</sup> We can note here only the effect of the condition described upon the various organizations.

The Ladies' Garment Workers' Union, at the convention of this union in Cleveland, Ohio, June 1-13, 1914, elected a new set of national officers. It is presumed that these new officers were in harmony with Socialist and industrial tendencies, since at the same time the convention declared that no official should be allowed to run for political office on any "capitalistic" ticket, and adopted a resolution favoring the amalgamation of all the clothing trades.<sup>88</sup>

The effort in the United Garment Workers' Union to displace the conservative administration represented by President Rickert and Secretary Larger, was not so successful. These officers had resisted overtures on the part of the Tailors' Industrial Union for amalgamation, alleging, according to the Tailors' journal, that the Tailors' Union was on the decline and would eventually

called, which took place on Dec. 30, 1912 . . . more than fifty thousand workers walked out within a few days. The number gradually increased so that within a few weeks a conservative estimate placed the number out on strike at 110,000."

<sup>87</sup> In a letter addressed to the 1914 convention of the United Garment Workers, Mr. Benjamin Schweitzer, a prominent organizer in that union and evidently a spokesman for the administration, gives the history of the New York strike of 1912, and states that the settlement agreed to by President Rickert was attacked by opponents of the national officers, and that these opponents were supported by the Jewish publication, *Forward*. This journal, he says, has continued to publish attacks on the national officers. (*The Garment Worker*, October 23, 1914, p. 1.) It seems certain that racial and religious feeling has had much to do with the formation of factions in the garment workers' unions. When in New York the writer of this thesis found that the Jewish workers in the clothing industry had a federation of their own known as the United Hebrew Trades, and were acting almost independently of the national officers of the Garment Workers' Union, although nominally affiliated with that body.

<sup>88</sup> *The Tailor*, July, 1914, pp. 2-3.

have to succumb to the newer organizations on their own terms.<sup>89</sup> The apparent opposition of these officers to the industrial movement, together with other difficulties of some years' standing, a part of which have already been discussed, led to increased disaffection, and at the convention of the United Garment Workers at Nashville, Tenn., in October, 1914, 143 delegates, mostly from New York City, and representing in the main workers on cheap custom tailoring,<sup>90</sup> claiming that they had been fraudulently unseated by the Rickert-Larger faction, held a convention of their own, elected officers, and declared themselves favorable to amalgamation of the clothing trades.<sup>91</sup>

It was not long before negotiations were on foot for the amalgamation of the Tailors' Industrial Union with the seceding faction of the Garment Workers. This movement is not surprising when it is recalled that the leaders of both of these organizations were in essential accord politically and in their attitude toward industrial unionism. For a considerable time prior to the Nashville episode, the Tailors' journal had been full of articles advo-

<sup>89</sup> *The Tailor*, December 29, 1914, p. 3, col. 1.

<sup>90</sup> It will be recalled that the local union of Journeymen Tailors in New York City had confined itself to organizing the better class of custom tailoring, the cheap custom workers being left to the Garment Workers.

<sup>91</sup> *The Tailor*, December 29, 1914, p. 3. The administration side of this affair is given by Mr. Benjamin Schweitzer in a statement published in *The Garment Worker*, October 30, 1914, in which Mr. Schweitzer alleges that the report of the credentials committee was still pending when the seceding delegates "bolted," and that the split was premeditated by these delegates.

A long defense of the seceders' position is found in the report of the officers of the seceding faction to the special convention of that group held in New York City in the latter part of December, 1914. A part of this report is reprinted in *The Tailor*, January 26, 1915.

That the new administration of the Ladies' Garment Workers' Union and the new organization of garment workers formed at Nashville were in essential agreement is evidenced by the conduct of the delegates of the Ladies' Garment Workers' Union, one of whom was the president of the union, at the 1916 convention of the American Federation of Labor. These delegates defended the seceding organization of garment workers and opposed action designed to discipline the seceding union by declaring a boycott among the A. F. of L. unions on clothing made by firms having an agreement with the seceders. See *Baltimore Evening Sun*, November 25, 1916, p. 14; also *Jewish Daily Forward*, November 26, 1916.

cating amalgamation, the administration evidently desiring to prepare the minds of the members for a move of this character. Soon after the Nashville convention, Mr. Sidney Hillman, president of the seceding faction of the Garment Workers, and a committee of his organization, appeared before the General Executive Board of the Tailors' Union to discuss the proposition. An agreement was finally worked out for the formation of an amalgamated organization, as follows:

#### AGREEMENT <sup>92</sup>

First, this organization shall be known as the Amalgamated Clothing Workers of America.

Second, the officers shall consist of: General President, General Secretary, General Treasurer, General Auditor, and eleven General Executive Board members, three of whom must be from the Tailors' Industrial Union.

Third, the G. E. B. shall organize the industry into departments when conditions warrant. Such department shall have full control of their own funds and shall have the right to make such laws to govern their department as they see fit, providing such laws do not conflict with the general laws.

Fourth, per capita tax payable to General Office shall be no less than fifteen cents per month for each member in good standing.

Fifth, method of election of general officers to be left until after the amalgamation. Then for the general membership to decide by referendum.

The above agreement was submitted to a general vote of the Tailor's Union. As the call for a vote was published in the journal of December 15, 1914, and the vote was required to be at headquarters December 24, 1914, the matter was of necessity acted upon hastily, and it has been charged by the opponents of amalgamation that this was done purposely.<sup>93</sup> However this may be, the proposition was carried by a vote of 3,441 to 2,486. The total vote of 5,927 represented about one-half of the voting strength of the union. Of a total of 280 local unions, 219 sent in their vote in time to be counted.<sup>94</sup>

On December 26, 1914, two days after the close of the Tailors' vote on the amalgamation, the Hillman faction of the Garment

<sup>92</sup> *The Tailor*, December 15, 1914.

<sup>93</sup> *The Tailor*, January 5, 1915, p. 4. Letter of C. M. Rakow, in "open forum" column.

<sup>94</sup> *The Tailor*, January 5 and January 19, 1915. The final vote as given above is quoted from the issue of January 19, as the returns published in the issue of January 5 required some slight corrections.

For purposes of comparison the following statement is given, covering all votes taken by the Tailors' Union, either upon the question of jurisdiction



Workers held a special convention in New York City. This convention was attended by two "fraternal delegates" from the Tailors' Industrial Union. A telegram received from the general office of the Tailors' Union, indicating that the amalgamation proposition had been carried by that organization, was received with much enthusiasm. The Garment Workers' convention did not undertake to legislate for the whole amalgamation, but for itself it passed the following important measures: (1) The name, "Amalgamated Clothing Workers of America," was adopted; (2) the per capita tax of members was fixed at 15 cents per month; (3) it was stipulated that no member should have the right to belong to two unions of the same trade at one and the same time (apparently this was aimed at the old United Garment Workers' Union, from which the Hillman faction had withdrawn); (4) the salary of president was set at \$50 per week and expenses, and the salary of secretary at \$50 per week; (5) appointment and salaries of general organizers were left in the hands of the General Executive Board; (6) Mr. Sidney Hillman was re-elected president, and Mr. Joseph Schlossberg re-elected general secretary; (7) the members of the General Executive Board were re-elected and one vacancy filled; (8) provision was made for conventions to be held biennially, and the city of Rochester, New York, was chosen as the place for the next convention.<sup>95</sup>

Although the Hillman group had adopted for itself the name proposed in the original agreement for the amalgamation as a whole, it did not thereby consolidate its interests with those of

over cheap custom tailoring, or upon the question of amalgamation with the Garment Workers:

<i>Date of vote</i>	<i>Yes</i>	<i>No</i>	<i>Total vote</i>	<i>Total membership (est.)</i>	<i>Per cent, total vote of all members</i>
Nov. 1897	2133	233	2366	5700	41.5
Mch. 1899	905	1695	2600	6200	42.0
Nov. 1901	1212	3511	4723	9700	48.6
Aug. 1903	3422	3657	7079	14500	49.0
Feb. 1906	2383	4083	6466	13500	48.0
Nov. 1909	3971	1319	5290	13000	40.1
Dec. 1914	3441	2486	5927	13000	45.6
July 1915	1339	3961	5300	13000	40.1

<sup>95</sup> *The Tailor*, January 5, 1915, p. 2. Report of Fraternal Delegates to the special convention of the garment workers.

the Tailors. In articles under the date of January 19, 1915, Secretary Brais of the Tailors' Union took pains to point out that the new officers of the Hillman group, now known as "The Amalgamated Clothing Workers of America," were representing their own branch only, but that as soon as provision could be made, the joint organizations would elect permanent officers for the amalgamation. Mr. Brais pointed out further that the vote of his organization to amalgamate did not by any means "finish the job," but that numerous difficulties were still to be faced. In this connection he said:

The members must remember that we have different dues; pay sick, death and strike benefits; and that due provision must be made to guard against any of our funds being used for any other purpose than that specified by our constitution. The systems of production differ very largely. Where our international union deals with small groups working for small firms, the Garment Workers work for large manufacturers, where many thousands of workers are employed. To frame a proposition that will apply generally is a proposition.

In the same issue Mr. Brais indicated that negotiations were on foot looking toward the adoption of a constitution for the amalgamation, and that arrangements had been made for a conference to be held in Rochester, N. Y., between the executive boards of the two organizations.<sup>96</sup>

The Rochester conference took place January 16 and 17, 1915, the two executive boards acting as a temporary joint executive council for the amalgamation. At this conference a constitution was adopted, of which some of the most important provisions were as follows:<sup>97</sup>

(1) The Preamble laid down the principles of industrial unionism as a step toward the ultimate control of industry by the working class.

(2) The name, "Amalgamated Clothing Workers of America," was definitely adopted for the amalgamation.

(3) The executive power was vested in a General Executive Council of eleven members, of whom three were to be from the Journeymen Tailors' Department.

(4) Provision was made for legislation by a biennial convention, or by the Executive Council between conventions, all amendments to be confirmed by referendum vote.

(5) Four general officers were provided for: general president, gen-

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<sup>96</sup> *The Tailor*, January 19, 1915.

<sup>97</sup> Proceedings of the General Executive Council, Rochester, N. Y. (Not printed.)

eral vice-president and editor, general secretary and general treasurer; these four officers to be *ex officio* members of the General Executive Council. Salary of general president, general vice-president and general secretary was set at \$40 per week; of general treasurer, \$50 per year.

(6) Per capita tax to the national organization was set at 15 cents per member per month; dues to the local union to be not less than 50 cents per member per month. It was stipulated, "All assessments shall take precedence over per capita tax," but no statement was made as to conditions under which assessments could be levied. Strikes were placed under control of the General Executive Council, but no provision was made for sick, death or strike benefits.

(7) Male or female workers not less than sixteen years of age, employed in the manufacture of clothing, were made eligible to membership, but no member was allowed to be a member of more than one local union at the same time, nor of any other organization of the trade, under a penalty of fine or expulsion by the L. U. of which he was first a member.

Other provisions were confined in the main to routine matters.

The constitution as adopted by the conference made no provision for its own ratification by the members. In his report upon the conference, Secretary Brais of the Tailors said:

This constitution will be published and put out to a vote of the members for ratification, as soon as the matters are corrected and things gotten into shape. . . . To inject at this time the nomination and election of officers, the introduction of new laws and propositions by local unions, would only confuse the situation. It was thought best to first establish the foundation, after which the membership would have an opportunity of handling the entire matter as they saw fit. . . . All these things will be presented to the membership in due time.

In addition to the adoption of the formal constitution, the conference decided that both organizations should begin to pay per capita tax to the amalgamated organization on February 1, 1915; that for the time being, separate headquarters should be maintained, the Tailors in Chicago and the Amalgamated Clothing Workers in New York; that the Tailors' branch should be known as the Journeymen Tailors' Department of the Amalgamated Clothing Workers of America, while the Garment Workers' branch should be known as the Clothing Workers of America; and that no convention should be held until September, 1916. The joint executive council was to serve until that time. Temporary officers were elected, as follows: president, Sidney Hillman; vice-president, J. Schlossberg; general secretary, E. J. Brais; general treasurer, T. Lapan.

Mr. Brais concluded his report of the conference in the Tailors' journal with a warning to the members that the American Federation of Labor, in his judgment a "reactionary" body, would oppose the "progressive" amalgamation, and advised them to stand "firmly and determinedly" against all opposition.<sup>98</sup>

Two weeks after his appointment as general secretary for the amalgamated organization, Mr. Brais resigned from his position as general secretary of the Tailors' Union. The executive board of the Tailors appointed Mr. Thomas Sweeney to fill the vacancy, pending an election.<sup>99</sup> The appointment of Mr. Sweeney was later confirmed by a general election,<sup>100</sup> and he has held his position as secretary until the present date.<sup>101</sup>

Immediately following the action of the Tailors' Union approving the proposed amalgamation, an internal controversy of very considerable proportions arose in that union, due to the conviction on the part of a large number of members that the action had been taken hastily and under a misapprehension of its real significance. It was not long before this dissatisfaction found expression in an organized movement to secure a reconsideration of the vote. This movement centered in Local Union No. 5 of Chicago, where there was a strong majority against the amalgamation, but involved eventually a large number of local unions and members. The first direct evidence of the reconsideration movement is found in the Proceedings of the General

<sup>98</sup> *The Tailor*, January 26, 1915, p. 3. A great deal of violent criticism, some of it personal, was levied against the A. F. of L. and its officers during the entire discussion of the amalgamation proposal. It must be remembered, however, that the opposition of the A. F. of L. was not directed against the amalgamation idea itself, but merely against amalgamation with a seceding body. In this connection it should be noted that about January 1, 1915, the A. F. of L. had ruled that the Tailors' label could not be recognized under the name, "Tailors' Industrial Union," but only under the old name, "Journeyman Tailors' Union of America." Probably as the result of this ruling, the old name was restored on the title page of *The Tailor*, beginning with the issue of January 12, 1915. See A. F. of L. correspondence on the subject of the label, *The Tailor*, January 19, 1915, p. 4.

<sup>99</sup> *The Tailor*, February 9, 1915, p. 1, Proceedings G. E. B.

<sup>100</sup> Two ballots were necessary; the deciding vote is published in *The Tailor*, October 5, 1915.

<sup>101</sup> February, 1917.



Executive Board for January 3, 1915.<sup>102</sup> At this meeting a letter was read from the secretary of the Chicago union, endorsed by the local executive board, protesting against the whole amalgamation procedure. As the national executive board claimed to have acted within its rights, the protest was "received and filed." A short time later, the executive board of Local Union No. 5 of Chicago issued a circular to all local unions throughout the country, urging them to second the Chicago protest, and giving reasons why this should be done. This circular was followed by others, and eventually by a call for a conference to be held in Chicago March 27, 1915. In spite of warnings against "disrupters" issued in the official journal by the administration officials, who at this date were still favorable to the amalgamation,<sup>103</sup> the Chicago call was answered by 66 locals, of which ten, including Chicago, sent delegates in person,<sup>104</sup> and the balance sent letters endorsing the Chicago position.

Several meetings were held in Chicago, additional circulars were sent out, and a committee was appointed to carry on the agitation. The expense of the work was met out of contributions from unions interested in the movement. The protests of the Chicago union and of the conference committee, as indicated in their literature, were based in the main upon the following alleged grounds:

(1) That the time allowed for the vote on amalgamation was entirely inadequate, and made it impossible for the matter to be thoroughly presented in an intelligible way to the members of the Journeymen Tailors' Union.<sup>105</sup>

(2) That<sup>106</sup> it is contrary to trade union policy and principles for a recognized union, such as the Tailors, to form any alliance or amalgamation with a faction of another organization

<sup>102</sup> *The Tailor*, January 12, 1915, p. 2.

<sup>103</sup> *The Tailor*, February, 2, 1915, p. 3, article, "Disrupters Active, Warning."

<sup>104</sup> Former Secretary Lennon was one of these delegates and was active in supporting the protest of the Chicago conference. Circular letter No. 1, p. 1, list of delegates; *The Tailor*, March 2, 1915, p. 4, article by Mr. Lennon on "What the members of the J. T. U. of A. are entitled to receive at the hands of their general officers."

<sup>105</sup> Circular of Chicago union, entitled "Protest against trickery."

<sup>106</sup> *Ibid.*

who have seceded from their parent organization, which was the case in the instance referred to; the Garment Workers' faction, headed by one Sidney Hillman, being a seceding faction from the legitimate union of the United Garment Workers of America.

(3) That the question as submitted was not a plain statement but a misleading one, and was submitted in that way in order to secure a favorable vote. The membership was misled and voted "Yes" upon the proposition, believing to a very considerable extent that the proposition for amalgamation was between our union and the United Garment Workers as recognized by the American Federation of Labor, when in truth, the intention was to amalgamate with the seceding faction of the United Garment Workers under the leadership of Mr. S. Hillman.<sup>107</sup>

(4) That the proposed constitution for the amalgamation made no provision for the protection of the Journeymen Tailors' Branch, and that the plan proposed would result in the trade

<sup>107</sup> "Circular Letter No. 1," issued by Chicago conference committee. Without trying to go into all of the details of the controversy or into the personalities with which it was attended, some of which were very acrid, it must be admitted that the form in which the amalgamation proposition first reached the members was, to say the least, open to misunderstanding. It has been stated that the first official notice calling for a vote appeared in *The Tailor*, December 15, 1914, and this is correct; but in the preceding issue, that of December 8, it was conspicuously announced that a vote would be called for shortly, and it was in this preliminary announcement that the greatest opportunity for misconstruction was presented. After several "scare" headings calling attention to the forthcoming vote, appeared the following sentence:

"The General Executive Board of the T. I. U. I. has at this writing under consideration an agreement that will, if adopted, amalgamate the *United Garment Workers of America*, [italics are the writer's] represented by S. Hillman, President, and Jos. Schlossberg, Secretary, and the Tailors' Industrial Union, formerly known as Journeymen Tailors' Union of America."

It is obvious that to a member who was not familiar with the split in the Garment Workers' organization, and who was not aware that Hillman and Schlossberg were not the officers of the recognized union, the above statement would have been misleading, and could easily have led him to believe that the proposed amalgamation was with the recognized union. As a matter of fact, as we shall see later, 52 local unions that gave a majority for amalgamation on the first vote, gave a majority against it on the second, and it seems probable that some of the members of these unions did not understand the proposition the first time.

which belonged properly to the Tailors being "gobbled up" by the Garment Workers.<sup>108</sup>

For the above reasons, and others of less importance, the conference demanded that the whole question of jurisdiction be re-submitted to a general vote under the following two heads:

First, shall the Tailors' Industrial Union amalgamate with the seceding faction of the United Garment Workers?

Second, shall the Tailors' Industrial Union comply with the instructions of the Philadelphia Convention of the American Federation of Labor to resume their former title, "The Journeymen Tailors' Union of America" and resume their claims of jurisdiction as in their constitution prior to 1914?

To understand the second demand, it is necessary to recall that in January, 1914, the Executive Council of the American Federation of Labor had given a decision indicating that the change of name and extension of jurisdiction adopted by the Tailors' Union in 1913 were in violation of the constitution of the American Federation of Labor. At the time, the organizations involved were requested to hold a conference, and to endeavor if possible to bring about a consolidation. Inasmuch as the organizations failed to do this, the full convention of the American Federation of Labor, in November, 1914, passed a resolution endorsing the report of the Executive Council in the matter of the Journeymen Tailors, and requiring the Tailors' Union to comply with the constitution of the Federation not later than April 1, 1915, on pain of suspension.<sup>109</sup>

Although the supporters of the amalgamation affected to despise the influence of the A. F. of L., there is no doubt that the action of the Federation had a very considerable effect. It lay in the power of the Federation to withdraw its endorsement entirely from the Journeymen Tailors' label, and in such an

<sup>108</sup> Circular Letter No. 1, cited above. There seems to have been some ground for this fear on the part of the Tailors, inasmuch as they had only three members out of eleven on the Executive Council of the amalgamated organization, and would also be greatly outnumbered on a referendum, the Hillman faction claiming to have 50,000 members, while the Tailors had about 13,000. (The United Garment Workers' organization has never admitted that the Hillman faction had as many as 50,000; it is a matter very difficult to determine, as members are continually falling behind with their dues in all of the garment workers' organizations.)

<sup>109</sup> *Proceedings, A. F. of L. Convention, 1914*, pp. 370-373.

event this label would become practically worthless.<sup>110</sup> That some, at least, of the Tailors recognized this is shown by the strong support given to the Chicago protest. As a matter of fact, there was a short period later when the Tailors' label was actually outlawed by the Federation.

The demands of the Chicago conference were presented to the General Executive Board of the Tailors' Union on March 28, 1915, by a personal delegation representing the conference. The Executive Board refused to accede to the demands in the precise form in which they were made, but pointed out that a proposition for reconsideration of the vote was already before the board, having been presented at the meeting of February 28, 1915, by Local Union No. 88 of St. Paul, Minn., and agreed that if the St. Paul proposition received the required number of seconds (one fourth of all the locals), the question would be re-submitted in the form demanded by the conference committee. The committee expressed itself satisfied with this action, and set about at once to secure the necessary seconds.<sup>111</sup> In this they were very successful, and at the meeting of the Executive Board on May 2, 1915, it was found that 100 local unions had seconded the St. Paul proposition. As only about 80 seconds were required, this number was amply sufficient, and in accord with its promise the board agreed to resubmit the amalgamation question and the other questions at issue. The form in which the questions were submitted was in effect the same as that recommended by the Chicago committee, but it was decided to make three heads instead of two, as follows:

(1) Shall our International be known as the Journeymen Tailors' Union of America?

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<sup>110</sup> A few organizations have succeeded in maintaining a successful career outside of the American Federation of Labor, but very few organizations that depend to any extent upon their label have succeeded in doing so. It is claimed by the United Garment Workers that the label of the seceding organization is worthless without the endorsement of the American Federation of Labor, and that firms that tried to use the label of the seceders have had their work returned to them, as union men affiliated with the A. F. of L. refused to buy it.

<sup>111</sup> Proceedings General Executive Board for February 28, 1915, *The Tailor*, March 9, 1915, p. 1; Proceedings for March 28, 1915, *The Tailor*, April 6, 1915, p. 1; letter of conference committee to Secretary Sweeney, *The Tailor*, April 6, 1915, p. 2.



(2) Shall our International return to the jurisdiction it claimed prior to January 1, 1914, as ordered by the A. F. of L.?

(3) Shall our International withdraw its affiliation from the Amalgamated Clothing Workers of America?

The vote was required to be at headquarters by July 3, 1915.<sup>112</sup>

Before concluding the account of the reconsideration movement, it is necessary to go back a little and see how actual efforts to operate under the amalgamation were working out. It will be recalled that a temporary organization had been effected at a joint meeting of the executive boards in Rochester, January 16 and 17, 1915. In accord with the action taken at this meeting, the payment of per capita tax by the Tailors to the amalgamated organization was begun February 1, 1915, amounting to \$1800 per month. The payment of this sum brought forth considerable protest from the dissenting element of the Tailors, who claimed that the whole amalgamation was illegal under trade union procedure; but was defended by the administration on the ground that the Tailors would get it back in the services of the organizers, all of whom had been placed under the direction of the Amalgamated. The real test, however, of the amalgamation plan came in New York City, where an effort was made to consolidate three local unions of custom tailors, including two unions of special order tailors affiliated with the Hillman union, and Local Union No. 390 of the Journeymen Tailors' Union of America. The effort to find a basis of consolidation for these three unions met with a number of obstacles, of which the most serious was the evident intention of the garment workers' branch to retain control of the special order workers, although the Journeymen Tailors had been assured in the general conferences that the special order workers would be turned over to their branch. After some unsatisfactory negotiations the local officers of the Journeymen Tailors' Union of New York became convinced that there was no intention on the part of the garment workers to change their attitude on the subject of the special order tailors, and reported to this effect to the national Executive Board of the Journeymen Tailors, at the same time protesting against any further payment of per capita tax by the Tailors to the Amalgamated.<sup>113</sup>

<sup>112</sup> Proceedings, *The Tailor*, May 11, 1915.

<sup>113</sup> Letter of John A. Petrone, in *The Tailor*, May 11, 1915, pp. 1-2; also article, "Some Reason," by William Block, *The Tailor*, April 20, 1915, p. 4.

The New York episode was of the greatest importance in the history of the amalgamation affair, for it was this episode, more than any other cause, that influenced Secretary Sweeney of the Journeymen Tailors to abandon his support of the amalgamation plan. As early as April 6, 1915, Mr. Sweeney wrote:<sup>114</sup>

Right from the first day to the present, we insisted on one thing. That was that all custom tailors should belong to our union. Up to the present time that is not carried out as we expected. No man can say that we agreed to anything else, and if any man or number of men think they can induce us to change our attitude on that point, they are mistaken. If the officers of the Amalgamation are not in a position to state exactly where the line is to be drawn on this question, they should be. If we are only to have the high class custom and a few label houses, then amalgamation is a one-sided affair.

And in the issue of April 20, 1915, after reciting the experience of the New York union, Mr. Sweeney said:<sup>115</sup>

So far as we know, the officers of the A. C. W. are in no way to blame for the unsatisfactory results in New York and elsewhere. They cannot force the special order Tailors into our union, but that is no good reason for the Journeymen Tailors' Union to continue paying one thousand eight hundred dollars a month for nothing—not even a say in how the organizers are to be distributed. . . . If we are to have amalgamation at all, we would have to reconstruct the whole thing. It is not possible to run it as it is now run, so far as we are concerned.

From this time on, the turn of sentiment against the amalgamation was rapid, and when the vote closed, July 3, 1915, it was found that the proposition to withdraw was carried, 3,961 to 1,339. On the proposition to resume the old name, "Journeymen Tailors' Union of America," the vote was 4,702 to 822; and on the proposition to resume the former jurisdiction, as ordered by the A. F. of L., the vote was 3,897 to 1,385.<sup>116</sup>

In explanation of the reversal of opinion indicated by these votes, which, in spite of what has been said, may appear to be inconsistent with the previous attitude of the union, as indicated by the first vote on amalgamation, it is well to undertake some further analysis of the votes. A comparison of the first vote on amalgamation, which closed in December, 1914, with the second vote, which closed in July, 1915, indicated that fifty-two unions

<sup>114</sup> *The Tailor*, April 6, 1915, p. 3.

<sup>115</sup> *The Tailor*, April 20, 1915, editorial, "Amalgamation not Satisfactory."

<sup>116</sup> *The Tailor*, July 7, 1915, p. 4.

that gave a majority favorable to amalgamation on the first vote, gave a majority against it on the second vote, whereas there were only four unions that reversed their vote in the opposite direction. It is not certain that the members who voted on the question the second time were the same members as those who voted on it the first time, the total vote in each case being less than fifty per cent of the total membership.<sup>117</sup> If we assume, however, that the group of voters in the two cases was approximately the same, the indications are that the vote against amalgamation on the second ballot included the vote of a large number of members who voted favorably to amalgamation on the first ballot. It is necessary, therefore, to account for the "conversion" of these members. It is obvious that the immediate propaganda for the reversal of the vote came from the Chicago conference, but the reasons which caused a number of members, in response to this propaganda, to reverse their previous decision, require examination. These members may be divided into the following groups:

(1) Members who voted for the amalgamation on the first ballot, believing that the proposition involved the union of Garment Workers recognized by the American Federation of Labor, but who reversed their vote when they discovered that the amalgamation was with a seceding body.

(2) Members who became convinced as the result of the attempt to put the amalgamation into effect that it could not succeed, either (a) on account of the opposition of the American Federation of Labor, or (b) on account of the difficulty of protecting the interests of the custom tailors' branch under the terms of the amalgamation.

(3) Members who at the time of the first vote were personal supporters of Secretary Brais, but who questioned his motives in resigning from the secretaryship of the Tailors' Union and accepting office with the Amalgamated Clothing Workers, and who experienced some reaction against the amalgamation on this account.<sup>118</sup>

In further explanation of the vote, it seems probable that the active propaganda conducted by friends of the amalgamation

<sup>117</sup> Cf. *supra*, p. 113, note 94.

<sup>118</sup> *The Tailor*, March 2, 1915, p. 4, col. 3, letter of A. Dahlman.

plan at the time of the first ballot tended to swell the favorable vote on this ballot; while on the other hand, the propaganda by the opponents of amalgamation at the time of the second ballot had a similar effect in the direction of defeating the proposition. It is desired to emphasize this point especially in connection with the "floating" or undecided vote, and also in connection with the indifferent element, which in the absence of an active propaganda would not vote at all.<sup>119</sup>

In consequence of the compliance of the Tailors' Union with the instructions of the American Federation of Labor, the union was reinstated in the good graces of the Federation, and the 1915 convention passed resolutions congratulating the Tailors upon their action, and confirming the full re-affiliation of the Tailors with the Federation.<sup>120</sup>

Since the withdrawal of the Journeymen Tailors from the amalgamation, the question of forming a single union in the clothing trade has attracted only intermittent attention. In *The Tailor* for December 7, 1915, an article by Mr. Lennon was published, in which he favored the formation of a single International Union composed of the Journeymen Tailors, the United Garment Workers and the Ladies' Garment Workers. Each

<sup>119</sup> The following statement, compiled from the returns on the two votes on the amalgamation question, lends support to the explanations here advanced:

*Analysis of returns of 146 unions that voted on both ballots*

	<i>1st ballot</i>		<i>2nd ballot</i>	
	Yes	No	Yes	No
52 unions that voted YES on the first ballot, and NO on the second:	1454	404	139	1597
4 unions that voted NO on the first ballot, and YES on the second:	50	60	75	43
37 unions that voted YES on the first ballot, and YES on the second:	1153	102	755	107
53 unions that voted NO on the first ballot, and NO on the second:	119	1554	139	1761
Totals:	2776	2120	1108	3508

*Note:* The returns of unions that did not vote on both ballots are omitted, as they are without value for purposes of comparison.

<sup>120</sup> *Proceedings, A. F. of L.*, 1915, p. 401, report of committee on adjustment; *ibid.*, pp. 119-121, résumé of all action by the A. F. of L. in the matter of the Journeymen Tailors.



branch was to be guaranteed self-government and the protection of its peculiar interests. As a step in this direction a permanent conference committee of three members from each organization was recommended, this conference committee to carry out the highest possible degree of coöperation between the three organizations, and to extend its powers to such an extent as might be approved by a referendum vote of the organizations.<sup>121</sup> The most recent utterances on the subject include suggestions from Mr. Sweeney for the drawing up of propositions for the reorganization of the clothing trades by a joint committee of the "rank and file" of the three organizations, officers to be excluded; also propositions from the official organ of the Ladies' Garment Workers' Union, favorable to recognition by the A. F. of L. of the Amalgamated Clothing Workers' Union, (the Hillman union), and a possible resumption of the movement for amalgamation between this union and the Journeymen Tailors' Union of America.<sup>122</sup> None of these propositions seems likely to receive official attention before the convention of the Journeymen Tailors' Union in August, 1917, and in view of the attitude of the American Federation of Labor at its 1916 convention, it is not probable that any movement involving the Amalgamated Clothing Workers will receive the approval of the Federation.

#### CONCLUSIONS <sup>123</sup>

1. The jurisdiction question in the tailoring industry is the outgrowth of industrial changes, which have resulted in a large part of the work formerly done by journeymen tailors of the old type being done by workers on a lower economic plane.

2. The Journeymen Tailors' Union committed a serious economic blunder when it allowed the new systems of custom tailoring to grow up outside of its jurisdiction.

3. The movement for unqualified amalgamation of the unions in the clothing trades, and for a leveling of craft lines and dif-

<sup>121</sup> *The Tailor*, December 7, 1915, p. 3, col. 4.

<sup>122</sup> *The Tailor*, February 13, 1917, p. 3, col. 1, editorial; *ibid.*, col. 2, article reprinted from *The Ladies' Garment Worker*, entitled "A Tribute to the Amalgamated Clothing Workers of America."

<sup>123</sup> The conclusions here presented are from the standpoint of the journeymen tailors themselves. The effects of the jurisdiction policy on the industry at large will be considered in Ch. IV, "General Economic Bearings."

ferences of trade union policy, is closely associated with the Socialist movement, the growth of which, both in these trades and in the general labor movement, is partly due to the accession of European Socialists.

4. The movement for an alliance or federation of unions in the clothing trades, whereby the autonomy of each interest would be preserved, is favored by the conservative elements, and is not confined to the Socialist group.

5. It is not probable that any movement for amalgamation or federation in the clothing trades could be successful except under the following conditions:

(a) The interests of those unions which have developed their wages and union resources to the highest point must be protected.

(b) There must be a conviction of absolute good faith on the part of all the amalgamating or federating elements.

(c) The field of custom-made clothing of the grade and price heretofore manufactured mainly by journeymen tailors must be regarded as a unit in the plan of amalgamation or federation, regardless of the method of production.

(d) The more prosperous branches of the industry must lay aside their prejudices and coöperate sincerely for the interest of the less prosperous branches.

(e) The coöperation of the American Federation of Labor is essential.

The reasons for most of the above conclusions, it is believed, are sufficiently evident from a perusal of the history just concluded. The second conclusion, however, which from the economic standpoint is believed to be the most important, requires some further comment. It seems certain that the refusal of the Journeymen Tailors for a number of years to admit the workers on new systems of manufacturing custom clothing was an economic mistake. If they had assumed jurisdiction over the new systems, several results might have been expected:

(1) The new systems being almost without exception carried on in workshops and on a basis of time payment, conditions for standardization of hours and wages would have been more favorable than they had ever been under the old systems, and it is probable that considerable improvements could have been effected.

(2) In this event the so-called cheap custom trade would not

have been as cheap as at present, and the fine trade would not have been undermined as rapidly.

(3) In so far as the fine trade did suffer from the competition of the cheaper systems, the tailors displaced would have been enabled, on account of the improved conditions in the cheaper trade, to obtain work there at living wages.

(4) Where the journeymen tailors found it necessary to strike for their demands, it would not have been so easy for the employers to get their work done on the cheaper systems.

As frequently pointed out by the advocates of admitting the cheap custom tailors, all of these results would have been a benefit to the skilled journeymen. However, these arguments were not sufficient to overcome the prejudice on the part of the skilled tailors against the cheaper workers, nor the fear on the part of the tailors in the smaller towns that the slightest encouragement from the union would accelerate the movement of the trade to the larger cities, in which, in the main, the cheaper systems were being carried on. Where these tailors made their mistake was in the belief that the movement in question could be checked by any means whatever. The new systems afforded an opportunity to satisfy a popular demand at less cost. This being true, the drift of the work away from the old systems was inevitable, and could not be materially affected by any opposition or prejudice on the part of the unionists; whereas if they had undertaken to organize the new systems, they could not, indeed, have prevented their establishment, but might have had a voice in their management. It is admitted that the tailors in recent days have seen their error and endeavored to adopt a different policy, but it is now rather late to make the change, inasmuch as the class of trade involved has either drifted into contractors' shops, where much of it has remained unorganized, or else it has been organized by the garment workers' unions, who have had neither the strong motives nor the financial resources that the tailors would have had to raise it to a higher plane.

## CHAPTER IV

### GENERAL ECONOMIC BEARINGS

It is the purpose of this chapter to consider some of the general economic consequences of the presence and activity of unions in the custom tailoring trade.

For purposes of economic analysis we consider that portion of the clothing industry which is concerned with the making of order of coats, vests, trousers and overcoats.<sup>1</sup> In general, the customer desiring to purchase any of these garments has his choice of garments made under four different systems of production; namely, (1) the old-fashioned journeymen tailoring system; (2) the team or sectional system; (3) the special order system; and (4) the ready-made or garment working system. In the first case he will go to a local merchant tailor, who will take his measure, cut the pattern or have it cut, and turn the work over to skilled journeymen tailors to finish. In the second case he will also deal with a local merchant tailor, but the work will be done in accord with the new system of subdividing the work which we have already described in connection with the efficiency movement.<sup>2</sup> In the third case he will deal with an agent: either a traveling man, a local special order agent dealing exclusively in that line, or a local merchant tailor or haberdasher who maintains a special order department. The agent will take the customer's measure and specifications and send the same to a factory, generally in another city, where the work will be done under a highly developed system of subdivision, employing in the main employees who rank as garment workers rather than

<sup>1</sup> We do not forget that both journeymen tailors and garment workers are employed in the making of clothing for women, but since this department of the industry concerns only a few members of the Journeymen Tailors' Union, it is considered unnecessary to include it in the present analysis.

<sup>2</sup> *Cf. supra*, p. 51.



tailors. In the fourth case the customer will go to a ready-made clothing store and from the proprietor's stock select the garments which suit his taste and come the nearest to a proper fit, these garments being made by garment workers in factories under a system which admits of even a higher degree of subdivision than the "special order," inasmuch as all sections of garments can be made in quantities and standard sizes.

We may conceive of four suits of clothes, identical in materials and specifications, and differing only in the fact that they are made under the four different systems of production mentioned above. In order to arrive at a conclusion with reference to the kind of effects which have resulted from the organization of unions in the custom tailoring trade, we may assume first a situation in which there are no unions in this trade, but the different systems of production are as described.<sup>3</sup> Let us assume that in such a situation the suit made on the first system costs the customer \$30; on the second system, \$28; on the third system, \$25; and on the fourth system, \$22. It is not necessary to account for all of the possible reasons for such differences in prices; it is reasonable to conclude, however, from our knowledge of the several systems of production, that if such differences in price exist, they are due in the main to two causes: (a) differences in labor costs; (b) differences in the scale of production, the ready-made system, on the whole, having the greatest advantage in this respect.

Into a situation like the above, let us now suppose that the

<sup>3</sup> This assumption involves another, namely, that in the absence of unionism the four different systems would have grown up. Upon this point, however, we believe that there is no doubt. The rise of the ready-made clothing industry in the first instance was due to the demand for cheaper clothing than could be made to the order and measure of each customer, even under a completely non-union régime. The very rapid development of the same industry was due to the invention of the sewing machine and the organization of the industry on a large scale in factories, and there is no reason to believe that unionism was the determining cause of either of these phenomena. Given the ready-made industry, the development of methods of making custom clothing by which the competition of the ready-made could be met in part was also inevitable, inasmuch as the methods of making ready-made clothing lent themselves to the making of clothing to measure, were cheaper, and were known to enterprisers who were under pressure to retain their hold upon the custom trade.

element of unionism in the field of custom tailoring is gradually injected, until workers in this field are organized to the same extent as at present. In this event it is reasonable to suppose that the wages of custom tailors will be raised; and if, for the sake of argument, we assume that unionism in some form has reached all three of the establishments in which the three custom-made suits of our illustration were manufactured, we may assume that wages and labor costs have been increased for all of these establishments, but in a different measure in each, inasmuch as unionism is strongest in the journeymen tailors' trade, less strong in the "sectional" trade, and weakest in the special order trade. Let us assume that under the new conditions, in order to make the same percentage of profit as before, the merchant tailor employing the old system must sell the suit for \$35; the merchant tailor employing the sectional system, for \$30; and the special order firm, for \$26. We may suppose the existence of certain buyers, who were just willing to pay \$3 for the superiority of the special order suit over the ready-made suit; \$3 for the superiority of the "sectional" suit over the special order suit; and \$2 for the superiority of the journeyman tailored suit over the "sectional" suit. These buyers, under the circumstances of our problem as first phrased, would be indifferent as to whether they purchased the \$22 ready-made suit, the \$25 special order suit, the \$28 "sectional" suit, or the \$30 journeyman tailored suit. But under the new circumstances it is no longer a matter of indifference with these buyers which suit they purchase. Each of them will now prefer the ready-made suit at \$22 to any of the other suits.

There is another class of buyers, we may assume, who insist on a suit made to the individual order and measure, and for whom under the first conditions it would be a matter of indifference which of the three custom-made suits they bought; we will assume, as in the case of the other group of buyers, that a journeyman tailored suit is worth to them just \$2 more than a "sectional" suit; and a sectional suit just \$3 more than a special order suit. Under the new conditions a "sectional" suit will cost \$4 more than a special order suit, and a journeyman tailored suit \$5 more than a "sectional" suit. It is obvious that under these conditions such buyers will purchase the special order suit.

and that the merchant tailor will lose their trade. In a similar way it can be shown, that even among buyers whose tastes confine them either to "sectional" or to old-style journeyman tailoring, a rise in prices such as we have assumed, which adds more to the price of the journeyman tailored suit than it does to the price of the sectional suit, will cause some buyers to abandon the former in favor of the latter. It is only the buyers who insist upon a journeyman tailored suit under all circumstances, being persons who can afford to take this stand, who will continue with certainty to purchase the journeyman tailored suits.

From the above argument we conclude that the introduction of unionism into the custom tailoring industry should have the effect: (1) of reducing the proportion which clothing made to measure bears to all clothing manufactured and sold;<sup>4</sup> (2) of affecting unequally wages and prices in different branches of the custom tailoring field, resulting in a redistribution of the patronage within this field, to the disadvantage of those branches in which prices are raised the most.<sup>5</sup>

These conclusions are difficult to verify from observation and

<sup>4</sup> The same conclusion should hold good, no matter what is the historical order of the introduction of the different systems of production. As a matter of fact, there was a time when custom tailoring held practically the entire field, and the large development of the ready-made, sectional and special order systems is decidedly recent; moreover, there were unions of custom tailors long before any of these systems acquired any considerable proportions; whereas in our illustration we assumed that the ready-made and other new systems were fully developed when unionism was injected into the custom tailoring field. Either in the actual case or in the assumed case, the field of custom tailoring, as compared with the whole field of clothing, is narrowed; and in both cases, *after the garment working industry comes into existence*, the narrowing of the custom field is due to the process described, whereby a portion of the custom trade is transferred to the ready-made; but before the ready-made industry came into existence in its present form, the presence of unions in the custom field, in so far as it raised prices in that field, narrowed the field by stimulating the initiation of the ready-made system, as well as by inducing greater economy in clothing or by inducing a larger use of substitutes (for example, second-hand clothing).

<sup>5</sup> We have ignored hitherto the influence of unionism in the garment working trade, as a matter foreign to the thesis, but it is obvious that unionism in this trade, in so far as it raises the price of ready-made clothing, will tend to *retard* the movement of patronage to this field from other fields.



experience, for the reason that the ready-made clothing industry has effects upon the custom tailoring industry of precisely the same kind as those which we should expect from the introduction of unionism in the custom field. The competition of the ready-made clothing industry, independently of any union influences, tends to reduce the proportion of all clothing which is made to measure, and to affect unequally different systems of production and different ranges of prices within the custom tailoring field itself; effects precisely similar to those which our analysis showed should result from the organization of custom tailors into unions. There are no statistical data at hand for examining directly the consequences, either of the ready-made clothing industry or of the introduction of unionism; nor for separating the consequences of these two causes. There is no doubt, however, that in the past fifty years the proportion of all clothing made to measure has greatly decreased, while there has been a corresponding increase in the proportion of ready-made clothing; and in the past twenty years it is the writer's opinion that the old-style merchant tailoring has lost quite as much trade to the sectional and special order systems as to the ready-made system. The old-style tailoring has held its own fairly well within a range of prices of suits from \$50 to \$150, but in the case of suits ranging from \$50 down to \$20 the competition of the new systems of custom tailoring and of the ready-made system has been keen. As far as the results of unionism in the custom tailoring trade are concerned, they appear to have been the following:

(1) There has been an increase of wages, which in the case of the higher priced suits the merchant tailor has found it possible to pass along to the consumer, but which in the case of the lower priced suits has obliged the merchant tailor to accept lower profits, and, coupled with other causes, has driven some merchant tailors out of business. In general, the increase of wages has contributed to decreasing the proportion of all clothing that is made to measure.

(2) The increase of wages in the case of journeymen tailors employed on the old system has accelerated the movement toward new and cheaper systems of production of custom-made clothing, which developed, for a time at least, outside of union influence, on account of the exclusive policy of the Journeymen Tailors' Union.



(3) The field of custom tailoring on the old system has been narrowed, and the number of journeymen employed on this system reduced, more rapidly than would have been the case had there been no union.

(4) The wages of individual journeymen have been greater, and more uniform as between different firms, than they would have been if there had been no union.

From the standpoint of the employer, therefore, the effect of unionism in the custom tailoring trade has been to increase the pressure, already strong on account of the competition of the ready-made system, tending to reduce his profits. At the same time, within those ranges of prices somewhat out of reach of the competition of the ready-made system, unionism has tended to prevent price-cutting among merchant tailors, and to hold up to some extent standards of quality and workmanship.

From the standpoint of the consumer, unionism in the custom tailoring trade has not meant depriving the consumer of cheap clothing, because he could always avail himself of the ready-made, but it has meant that he has had to pay more for the luxury of having his clothing made to measure; and the "marginal consumer" for custom-made clothing at the increased prices has been obliged to satisfy himself with a lower grade.

## GLOSSARY

**Journeyman tailor** :— a tailor who has learned through a definite apprenticeship or equivalent training how to make an entire garment by his own labor, and who is employed upon clothing made to the order and measure of the individual customer.

**Individual system** :— system under which the journeyman tailor alone, or assisted by one or more helpers hired by himself and under his supervision, makes the entire garment.

**Sectional or team system** :— system under which each garment or suit is made by a “team” composed of a relatively small number of workers, each skilled in some particular process.

**Factory system** :— system under which the garment or suit is made in a factory, like ready-made clothing, under a highly developed system of subdivision; differs from the manufacture of ready-made clothing only in the fact that each garment or suit is made to fit the specifications of the individual customer.

**“Old-line” or “old-style” tailoring** :— tailoring done by skilled journeymen tailors working on the individual system.

**Fine store, fine trade** :— these expressions are used to distinguish merchant tailoring establishments selling suits within the approximate price range of \$35 to \$150, and employing the individual system or a sectional system capable of turning out an equally high grade of work.

**Cheap trade** :— applied to suits made to measure, but selling in general from \$35 down; especially applied to clothing sold under the mail order or agency system, and made under the factory system.

**Bushelman** :— a journeyman tailor employed by a merchant tailoring establishment or by a ready-made clothing establishment to make alterations and repairs in clothing after it is finished.

**Single-handed** :— without helpers.

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